Public Utilities FORTNIGHTLY

May 16, 1929

PUBLIC UTILITIES REPORTS, INC.
WASHINGTON, D. C.

1400-pound pressure at Kansas City

At Northeast Station, the Kansas City Power & Light Company has installed two Combustion Engineering Boilers (Ladd type) each capable of delivering 200,000 pounds of steam per hour and designed for a maximum pressure of 1400 lb. gage.

These units are equipped with C-E Fin Tube water-cooled furnaces, C-E Economizers and C-E plate type Air Preheaters and are fired by Lopulco Pulverized Fuel Systems of the direct fired type.

The difference in investment costs of this high pressure installation and of an installation for 300 lb. pressure is surprisingly small.

At Northeast Station, the fuel saving resulting from the use of the higher pressure is nearly three times the fixed charges on the increased investment.

This installation is an excellent example of coordinated design. The complete fuel burning and steam generating equipment was sold and installed under one contract — one responsibility and one set of guarantees.

COMBUSTION ENGINEERING CORPORATION
International Combustion Building
200 Madison Avenue, New York, N. Y.
A SUBSIDIARY OF INTERNATIONAL COMBUSTION ENGINEERING CORPORATION

COMBUSTION ENGINEERING

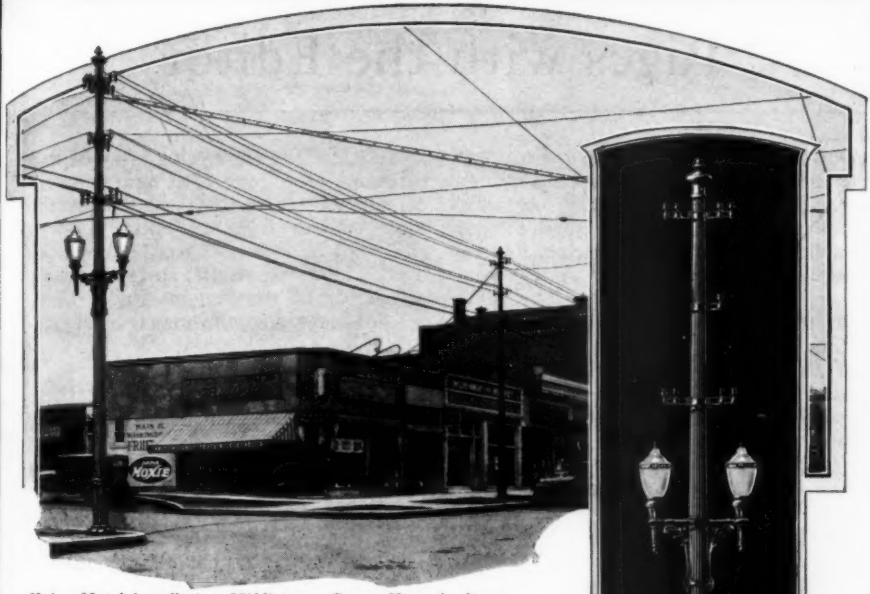
HENRY C. SPURR, *Editor*
KENDALL BANNING, *Editorial Director*
ELLSWORTH NICHOLS, *Associate Editor*
FRANCIS X. WELCH, *Contributing Editor*
M. M. STOUT, *Assistant Editor*

Public Utilities Fortnightly

VOLUME III — *May 16, 1929* — NUMBER 1

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

PUBLIC UTILITIES FORTNIGHTLY; a magazine dealing with the problems of utility regulation and allied topics, including the official decisions of the State Commissions and courts; endorsed by the National Associations of the Utility Industry and by the National Association of Railroad and Utilities Commissioners, and supported in part by those conducting public utility service, manufacturers, bankers, accountants and other users of the publication. Published every other Thursday; 75 cents a copy; $15.00 a year; with bound volumes and Annual Digest, $32.50 a year. Editorial and advertising office, Munsey Building, Washington, D. C., circulation office, Duffy-Powers Building, Rochester, N. Y. Entered as second-class matter April 29, 1915, at the Post Office at Rochester, N. Y., under the Act of March 3, 1879.



Union Metal installation, Middletown, Conn. Note the heavy loading of the pole at the left.

Middletown Saved Thousands of Dollars

ONE after another, American cities are modernizing their street electrical equipment. Following the lead of Cleveland, Detroit and other large cities, Middletown, Conn., has installed Union Metal Fluted Steel Poles in the downtown district.

Instead of separate poles for each type of service, one set of Union Metal Poles now carries the lighting and power circuits, railway feeders, trolley span wires, traffic signals, police and fire alarm wires and the street-lighting circuit. Tall, stately poles, spaced at wide intervals, easily bear this heavy loading and offer a sharp contrast to the old method of dozens of unsightly poles to every block. The beauty of this installation has eliminated the demand for underground wires and has saved the thousands of dollars which such construction would have cost.

In many other cities the use of Union Metal equipment has reduced the number of poles along the curb line from 50 to 75 percent—has silenced the underground line agitation. We will be glad to tell you more about how this is accomplished.

Union Metal Design No. 4306 in heights of 30" and 32" used in Middletown, Conn.

See the Union Metal Exhibit at the N.E.L.A. Convention, Booths 178 and 180, Atlantic City, June 3-7.

THE UNION METAL MANUFACTURING CO.

General Offices and Factory: Canton, Ohio

Sales Offices—New York, Chicago, Philadelphia, Cleveland, Boston, Los Angeles, San Francisco, Seattle, Dallas, Atlanta.

Distributors:

GENERAL ELECTRIC MERCHANDISE DISTRIBUTORS GRAYBAR ELECTRIC CO., INC.

Offices in all principal cities

UNION METAL

DISTRIBUTION AND TRANSMISSION POLES

Pages with the Editor

DOWN in Washington several of our eminent law-makers are putting on their thinking caps and devising ways and means for placing more of our public utilities under stricter Federal regulation.

* *

AT the present time there are various plans afoot for tightening the control of Uncle Sam over our lines of communication — meaning specifically, of course, telegraph, telephone, radio and cable facilities.

* *

ALL of these projects are of considerable significance to all public utility enterprises.

* *

SOME of the projects embody such unusual, not to say remarkable features, that the Editor has discarded the newspaper comment (which is sometimes a bit distorted) as his authority, and gone personally to the authors of the proposed laws and invited them to prepare authoritative statements, for publication in PUBLIC UTILITIES FORTNIGHTLY, that will point out their reasons for believing that further regulatory legislation is needed and why they believe that their proposed laws will accomplish their purpose.

* *

THE first of these articles will appear in the June 13th issue of this magazine.

* *

IT is written by SENATOR HUGO L. BLACK of Alabama, and it tells why the author believes that no public utility corporation should own or operate a broadcasting station, and what his proposed amendment to the bill purposes to do about it.

* *

THE Senator's article touches upon a number of highly controversial points. The Senator's views will not pass unchallenged.

INDEED, the next following issue of this magazine—the June 27th number—will contain an article that will discuss the same subject from an entirely opposite point of view. It has been written by the HON. H. A. BELLOWS, formerly a member of the Federal Radio Commission, and now the manager of station WCCO in Minneapolis.

* *

THE Editor welcomes both of these distinguished gentlemen to our group of contributors. Widely as their views differ, they are now (as the old-time prize-fight promoters used to announce) "both members of this club."

* *

DESPITE the fact that the circulation of this magazine has increased nearly three-fold during the past four months, our print-order has not yet caught up with our steadily climbing sales.

* *

THE result is that the Editor is unable to furnish back numbers for 1929—all of which are now out of print and no longer obtainable.

* *

YET so insistent have been the demand for additional copies of certain articles that have appeared in these pages that several contributions have been reprinted in pamphlet form; in some cases these pamphlets have gone into two and even three editions.

* *

THUS these articles have attained a circulation considerablly larger than that of the magazine in which they originally appeared.

* *

AMONG the more recent of these contributions to be thus honored by reprintings are Roger Babson's article, "The Economic Significance of Customer Ownership" (which appeared in our April 18th number), Dr. John

(*Continued on page VIII*)

Bauer's article, "Adjusted Actual Costs" (which was published in our May 2nd issue), and "When the Customer Won't Pay His Bills," by Henry C. Spurr (which came out February 7th).

* *

IN addition, PUBLIC UTILITIES FORTNIGHTLY is being quoted more and more in the public prints; on several occasions our articles have been reprinted in their entirety—with our permission—in other periodicals.

* *

IT is gratifying as well as flattering to the Editor to receive this proof of the growing influence of this magazine.

* *

EDWARD L. BERNAYS, whose article, "The Public Utilities and the Public Pulse," will be found on page 580 of this issue, is widely known as an authority on public relations—a subject that is commanding more and more attention from the public utility executives of this country.

* *

FAILURE to gauge public opinion correctly; inability to anticipate the public's reaction to certain policies and methods, and lack of experience in directing its press relations have caused many a public utility company endless —and needless—grief and expense.

* *

WHEN the doughty old veteran, Commodore Vanderbilt, uttered the phrase that has so long been attributed to him, "the public be damned," he coined a casual curse that has come blundering down the years and prejudiced the public against Big Business in general and public utilities in particular for nearly three generations—and which is still going strong!

* *

BIG BUSINESS has learned many a good lesson since those days. Chief among them is that the good will of the public is not only desirable but absolutely essential for any enduring success.

* *

AND as Mr. Bernays points out, if the good will of the public cannot be won by business methods and policies that have been adopted, those methods and policies must be changed. "Good will" has become—properly enough—a real and tangible factor in business-building.

* *

"THIS article," Mr. Bernays writes, "gives my idea of what a public relations program for a public utility should be:

"1. A definite policy based on sound values.

"2. A definite responsible machinery for carrying it out.

"3. A study of the *media* which reach the public.

"4. A dramatization of the ideas so that they may carry effectively in the *media*."

* *

AMONG the bright spots in the Editor's day are the friendly words of commendation that come in from sources that carry weight. It is always gratifying to learn that the work one is doing is of service to others.

* *

HERE, for example, is what one important official thinks of this magazine:

* *

"THE especial value of PUBLIC UTILITIES FORTNIGHTLY lies in the brevity of its fortnightly survey of most important happenings in the regulatory field, and in its full, impartial reports of the most important decisions of commissions and courts touching regulation. I do not see how anyone interested in public regulation can afford to be without it."

—JOHN E. BENTON,
General Solicitor, National Association of Railroad and Utility Commissioners, Washington, D. C.

* *

THE coming issue of PUBLIC UTILITIES FORTNIGHTLY — out May 29th — will contain one of the most important contributions that has yet appeared in these pages; "The Regulation of Holding Companies."

* *

THE author, WILLIAM M. WHERRY, of the New York Bar, is regarded as one of the country's foremost authorities on the legal aspects of this controversial subject which is now assuming such major importance to public utility companies everywhere.

—THE EDITOR.

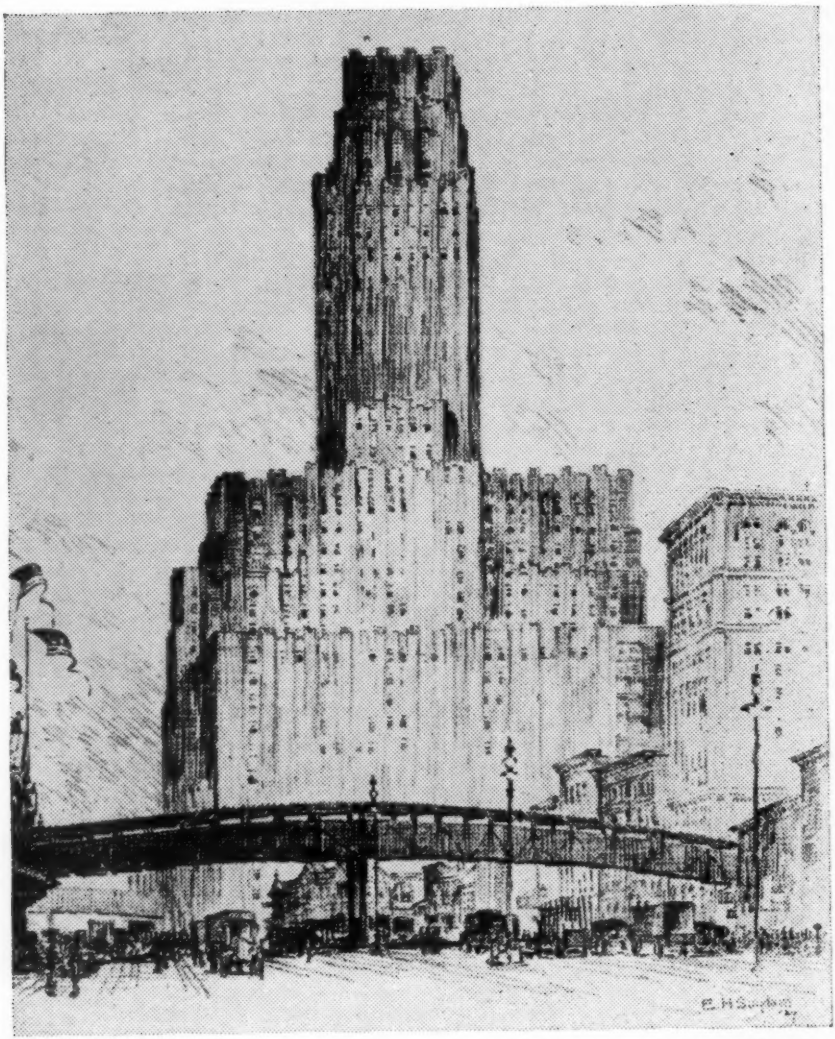
M A Y

Reminders of Coming Events — **Utilities Almanac** — *Notable Events and Anniversaries*

16	T*h*	The first through passenger train from California reached Omaha, Nebraska, over the tracks of the Union Pacific Railroad, 1869.
17	F	BENJAMIN FRANKLIN, whose experiments with a kite were an important factor in the development of the electrical industry, died, 1790.
18	S*a*	Uncle Sam opened the Panama Canal to regular barge traffic, 1914. FREDERICK A. WINSOR, a German, obtained his first English patent for making gas, 1804.
19	S	The first demonstration of the transmission of pictures over telephone wires (from Cleveland to New York) was held by the engineers of the Bell System, 1924.
20	M	JAMES SHARP of Northampton, England, gave the first authentic demonstration, in his own home, of the use of gas for cooking, 1830.
21	T*u*	A dramatic impetus was given to aerial transportation when CHARLES A. LINDBERGH completed his epochal New York to Paris flight at 10:21 P. M., 1927.
22	W	Dining cars were first introduced in the United States by the Pullman Co. on the Southern Pacific line between Ogden and Truckee, Utah, 1890.
23	T*h*	GEORGE WESTINGHOUSE first conceived his idea for an air-brake in 1867; its successful test in 1868 led to far-reaching consequences in railroading.
24	F	The first commercial use was made by SAMUEL F. B. MORSE'S line between Baltimore, Md., and Washington, D. C.; 1844. First telephone exchange in Florida opened, 1880.
25	S*a*	SIR HUMPHREY DAVY'S demonstration that electric current can heat metal to incandescence proved a cornerstone in the history of the electric light industry, 1809.
26	S	A pioneer service in commercial passenger transportation by airplane was established by the Western Air Express, Inc., in California, 1928.
27	M	The path was blazed for aerial passenger service to Europe when the U. S. Navy plane NC-4 reached Portugal, completing the first transoceanic flight in history, 1919.
28	T*u*	The "Exposition Flyer," the crack train of the New York Central, made its first run from New York to Chicago in less than 20 hours, 1893.
29	W	¶The annual exhibition of the National Electric Light Association will open in Atlantic City, May 31, 1929; the convention will open June 3, 1929.

"The world is what it is today because there have been men of vast vision in the field of science, and men of vision in the field of commerce who could take the findings of the scientist and make them accessible as a commodity to all."

—Rev. Wofford C. Timmons



From a drawing by E. H. Suydam

Courtesy of the New York Edison Co.

CITADELS OF SERVICE

No. 3: *The new structure of the New York Telephone Company in West Street; its receding tiers, designed in conformity with the modern building regulations, recall the mediaeval fortresses, vastly magnified.*

Public Utilities
FORTNIGHTLY

VOL. III; No. 10 MAY 16, 1929

The PUBLIC UTILITIES AND THE PUBLIC

THE purpose of the Commerce Clause of the Federal Constitution is to "protect commercial intercourse from invidious restraints, to prevent interference through conflicting or hostile state laws and to insure uniformity of regulation." This clause however has been made the cloak for a great deal of utility abuse, especially in the motor utility field. For reasons best known to itself, the Congress of the United States had failed to provide any sort of regulation for the interstate bus and furthermore the courts have refused to permit any regulation by the states. The result has been a wholesale scurrying across state lines by motor carriers having no other purpose except to dub their operations "interstate commerce" beyond the jurisdiction of the State Commissions.

There have been a good many decisions on this point, by the State Commissions and the courts. It is fairly well-settled that a motor utility route which has an unnecessary extension on one end over the border between two states is engaging in a "subterfuge." But the Commission have heretofore for the most part contented themselves with refusing authority to such operators to do any business *within* the state. This didn't quite take care of all situations for the simple reason that the companies could go on operating and by discharging passengers over the border the evasion of local regulation would continue.

The Pennsylvania Commission has now handed down a two-fisted decision on the matter. This Commission has told such an operator to stop operating and get out of the state unless the proper authority is secured.

Here are the facts. A certain company ran motor coaches between Scranton and Philadelphia. They left the Lackawanna Trail at Easton, Pennsylvania, and crossed over to Phillipsburg, New Jersey, and thence

proceeded south on the eastern shore of the Delaware river to Riegelsville, New Jersey, where they crossed back over to Riegelsville, Pennsylvania and proceeded to Philadelphia. If the Commission told this company to stop local business, it could simply discharge all Easton passengers at Phillipsburg, New Jersey, which is practically a suburb of Easton.

But the Commission told the company to clear out in no uncertain terms. Here is the opinion:

"Respondent's choice of a longer and less desirable route for a short distance outside the state, its manner of printing its tickets, the practical nonexistence of any business to the points outside the state, and its attempts to create the appearance of interstate and intrastate business necessarily commingled by its occasional changing of busses at Stroudsburg, all point to the conclusion, and we so find, that respondent's operation beyond the boundaries of Pennsylvania is merely a "discreditable subterfuge" to which no countenance ought to be given by the regulatory authorities of this state."

As long as there is no Federal regulation of the interstate bus these subterfuges will continue, but with a few more decisions from State Commissions like this, the activities of interstate operators of this kind will be cut down to a minimum. This is said with all due respect of course to those motor utilities operating between distant cities which are honestly engaged in interstate commerce and rendering real service to the public in that capacity. Such companies will welcome honest regulation.

Delaware, L. & W. R. Co. v. Frank Martz Bus Co. Complaint Docket Nos. 7825 et al.

The Regulation of the Wages of Public Utility Employees

THE Bureau of Labor Statistics of the United States Department of Labor has stated, in an analysis of legislation affecting employees, that the compulsory fixing of wages of labor employees has not been looked upon with favor by the Supreme Court of the United States, and that the nearest approach to wage fixing on the part of Congress was in the passage of the Adamson Law in 1916. This law made eight hours the standard in computing the wages of employees, and the constitutionality of the law was upheld upon the ground that it was an "hours of labor" law.

The question of the right of the Federal Government or the states to regulate the wages of employees of public utility companies is an important one. It is, of course, a very delicate subject because it involves the interests of thousands of persons and because any attempt of the Federal Government or the state to exercise such a power would undoubtedly stir up a great tempest. It is, however, not inconceivable that Commissions might attempt to exercise that power, under the authority with which they are vested to fix reasonable rates, for utility service.

The Commissions have the power to fix the rates of public utility companies on the ground that the utili-

ties have devoted their property to a public use. They are, therefore, not treated on the same basis as men engaged in other lines of business.

The owners of a public utility company cannot say: "This business is ours; we shall do with it what we please." The state can reply: "You have devoted this business to the public. We can fix your charges if we please as long as we do not make them low enough to take away your property."

Now, in the fixing of reasonable rates, the reasonableness of operating expenses has many times been considered by the Commissions. How far they may go in this is not clearly defined. Certain matters of operating policies are within the reasonable discretion of the managers of the companies. However, it has frequently been held by the Commissions that they may pass upon the reasonableness of the salaries paid to public utility officers. The Commissioners have said to the companies: "You may pay as large salaries as you please to your officials but we shall allow you to charge as an operating expense to be borne by the ratepayers, only so much of the amount you pay out in salaries as we deem to be reasonable. Anything above that you must take out of the pockets of the stockholders." This is for the practical purposes of rate making, the fixing of the maximum salaries to be paid to the officials.

If the Commissions have the power to do this, have they not also the power to fix the maximum wage to be paid other employees? There is no difference in principle, so far as regulation is concerned, between the salary paid the president of the company and the salary paid to his stenographer or to a man who reads meters, erects poles, or strings wires. If the Commission has the power to say to the company: "You shall charge only so much as the salary of your president, to operating expenses," it must likewise have the power to say, "you shall charge a salary of only so much to your stenographer as an operating expense, or to your meter men, your construction men or your line men." The labor employed by a public utility company may be said to be as much devoted to a public use as is capital, which is only the fruit of labor.

However, it will probably be a long time before any State Commission will venture to test the soundness of such a theory, but stranger things have happened.

The Development of Water Power IS *a Business Issue*

THOMAS A. Edison says that water power is a political issue, not a business one; that the monopolizing of water power is also just a political issue; that rates are fixed at any point by the cost of generating power from steam.

Probably what Mr. Edison means is that the maximum rates of hydroelectric power under competitive conditions are fixed by the cost of electricity produced by steam. The purpose of the use of water power or steam by electric utilities is to produce

electricity. When the current reaches the consumer the energy is the same whether produced by steam or electricity. A monopolistic control of hydroelectric power would not permit the sale of the current at a price beyond which it could be produced economically by steam. Economic laws would step in to prevent it.

Hydroelectric companies have asserted before Commissions the right to measure their charges by the cost of steam-produced electricity; but this right has not been sustained. Under regulation, therefore, the reasonableness of rates for hydroelectric service may be less than those for steam service, provided the hydro service costs less to produce than the steam service.

Our public waters have always been a matter of concern to our citizens. In New York some of the waters which belong to the people have been captured and run into a channel called the Erie Canal upon whose bosom freight traffic is supposed to move. Some traffic does, in fact, find its way along this channel, but it costs the people more than freight which goes by rail. Still the waters falling from the sky, which were intended for the use of the people, are thus preserved for their use.

While we are talking a lot about our water powers and wrangling over who shall develop them, their preservation for the use of the people for electric current may cease to become a business issue; but Mr. Edison is wrong in saying it is already not a business issue.

Before the World War, when the price of coal was cheap, electric utilities did not bother much about developing economies in coal consumption. After the war when the price of coal shot up, they had to do something about it. Necessity, being the mother of invention, they learned to make better use of their coal. They got more out of it. The result is the claim is being made that before long electricity may be produced cheaper by steam than by water power. It is not at all unreasonable to believe this.

While many persons hesitate and argue and argue and hesitate, men of constructive genius may work out a solution of the problem which will make further hesitation and argument unnecessary. Solutions occur in laboratories just as well as on rostroms.

The Punishment of Public Utility Corporations for Personal Violations of Law

A LEGAL writer once remarked that a corporation could do about anything a natural person could do except vote, marry, make a will, or get thrown into jail. While the *persona ficta* which is the juristic conception of the corporation in the United States prevents anything so tangible as a corporate prisoner, the fact remains that even in this country, corporations have been convicted for purely personal crimes as grand larceny and mailing of obscene matter. (See 36 Yale Law Journal, 827.) Of course, punishment in such cases must necessarily take the form of a fine.

Utilities incorporated and other-

wise have frequently been fined for violating state laws regulating them. A very interesting case of this sort comes from Louisiana where a certain motor freight company had been engaged in public service without authority of the Commission. Previous to the day of reckoning before the Louisiana Commission, however, those controlling the company at the time of the violation apparently sold out to new interests. The new management, evidently set about putting its corporate house in order. The violations complained of ceased and a formal application was made for appropriate authority. Nevertheless the Louisiana Commission fined the company $100 and stated in its opinion:

> "In this connection it is but fair to state here that while the corporate name has not been changed, its control and ownership has passed to other hands, and the present management has sought early hearing on and disposition of this application for a certificate.
>
> "Under these findings we have no alternative but to impose a penalty on respondent for violating the rules and regulations of the Commission by engaging in the transportation of freights and wares, for compensation, over the highways of Louisiana without first having applied to and secured from this Commission an appropriate certificate of convenience and necessity, but we feel, under the circumstances, and in view of the pending application for such certificate, that imposition of the minimum penalty is justified."

The new operators may have been and probably were as innocent as new born babies, but it is interesting to note that the Louisiana Commission refused to disregard the corporate entity and declined to look behind the corporate veil to absolve the innocent owners.

This is evidence that the view of the Louisiana Commission (which is probably also the *prevailing* view of the situation) looks to the company and not to the operators for expiation of an offense committed in the name of the corporation. The only weight a change of corporate control can have is to mitigate the guilt and lighten the penalty.

The reason for this is obvious. If changing control of a company can avoid the consequences of a law violation, ingenious operators can transfer stock after each offense and escape punishment indefinitely. Nor should undue tears be shed over the fate of the innocent purchasers; they are not entirely innocent. They are duty bound either to look up the past record of the company they are buying or stand the consequences. With knowledge, actual or constructive, of the taint, they should not complain if they are held responsible. It is just like buying a vicious dog or a house with a mortgage on it, and the moral of this decision to utility operators should be: "Caveat emptor."

Louisiana Public Service Co. *v.* Johnson Motor Freight Lines, Order No. 585, No. 1131.

Lease Shifting Operating Responsibilities of Unprofitable Service Denied

WHAT should a utility do when it finds that it cannot make money in a certain territory—sell out or clear out?

The California Transit Company holds the bus rights between Los Banos and Merced in the Yosemite Valley section. The Company found the route unprofitable and recently applied for permission to lease the operative rights to a certain individual. The Commission looked into the record of the proposed purchaser and found not only doubtful financial resources but also inexperience in the motor utility business. The Commission felt that since the California Transit Company had failed to make good under such circumstances—the ambitious gentleman was almost predestined to the same fate and it was held that the company should not be authorized to enter into the proposed lease, temporarily shifting the burden of responsibility to such an individual. The Commission in refusing the authority sought, stated:

> "This Commission has heretofore, in other similar proceedings, looked with disfavor upon the policy of authorizing leases of operative rights and has suggested instead abandonment of service between particular points of operation where the owner of the operative rights feels that the operation is burdensome or unprofitable."

Re California Transit Co. Decision No. 20694, Application No. 14897.

State's Right Not Waived by Failure of Competing Utilities to Complain of Violation

UTILITY operators sometimes lose sight of the fact that laws regarding their regulations were created primarily in the interest of public service, and not for their individual protection. For instance an Ohio statute requires that certain procedure be followed upon an application for increased equipment. Some time ago a motor utility in that state actually altered the quality and quantity of its equipment without fulfilling these requirements. More recently a competitor complained of this deficiency before the Ohio Commission and the defending company was ordered to desist from its new operation.

On appeal from this order the first company contended that since the competitor had waited with full knowledge of the facts for more than two years before complaining it had waived its right to insist upon statutory requirements. In sustaining the Commission order, Judge Allen of the Ohio supreme court, pointed out that the Motor Transportation Statute was designed not for the benefit of the motor bus operators but to serve public convenience and necessity. Therefore a competing carrier who delayed a considerable period before complaining of non-compliance by its competitor with the requirements of law as to an increase in equipment would have no power thereby to waive such requirement for the state, which can raise the point any time.

Central Ohio Transit Co. *v.* Public Utilities Comm. No. 21317.

Outstanding Damage Claims against Utility Are Not a Bar to the Transfer of Property

WHEN the Pioneer Stages System, Incorporated, asked the Missouri Commission for authority to transfer its intrastate certificates to the YellowaY, Incorporated, covering bus routes between Kansas City, St. Louis, and St. Joseph, the transfer was opposed by an attorney representing certain persons having unsettled claims against the YellowaY Company. He stated that his client had had difficulty in collecting these claims and he contended that the transfer of the certificate should not be approved until the claim had been settled. The Commission refused to agree with his contention in view of the fact that it did not have authority to adjudicate questions of damages against motor carriers, and could therefore take no action that would in any way affect any claim for damages that might be in existence against the company wishing to sell its rights. It was pointed out that before a certificate was issued to either company, the Commission had required such companies to file insurance policies as directed by law, and the Commission stated:

> "The transfer of the certificate or the selling of the physical property by these companies do not deprive those claiming damages from injuries received while passengers or due to negligence of the companies, from collecting their judgments either from the bus companies or the insurance companies. The laws of this state provide a method for serving process upon corporations and individuals engaged in rendering service as motor carriers, and the Commission requires each motor carrier to file a statement showing its principal office or place of business. The only matter that can be inquired into by the Commission in this proceeding is as to the fitness and qualifications of the purchaser."

Re Pioneer Stages System, Inc. Case No. 6158, Certificate No. 16.

The Function of the Federal Courts in the Determination of Railway Rates

COMMENTING on the recent Supreme Court decision in the New York city 7-cent fare case, in which the Court held that the railway company had not exhausted its state remedy, a prominent newspaper takes the position that the regulation of the rates of local utilities is a matter which should be left to the states without interference by the Federal Courts.

This seems to be quite a popular view; but it is unsound, because based on a misapprehension of the purpose of the Federal Courts. The Federal Courts are not rate-making bodies. They do not pass even upon the reasonableness of rates except in so far as the question of confiscation is involved. All that a Federal Court can do is to say whether or not a rate established by a state authority is high enough to avoid the taking of the company's property.

There are some who say that the Federal Constitution does not really

forbid the states from taking property without due compensation; and that the Supreme Court's interpretation of the Constitution to the contrary is a piece of judicial legislation. But, whether the Supreme Court was right or wrong about that, the law of the land for many years has been that property cannot be confiscated by the states; and it is not likely that the Supreme Court will ever reserve itself on that point.

Whether we think the state ought to have the power to take away property without compensation will depend somewhat upon whose property is sought to be taken. If someone is trying to take away our own property, we shall probably feel that the Supreme Court's interpretation of the Federal Constitution is very comforting. If we want to take away somebody else's property we may think the Supreme Court has overreached itself.

Under our present law, however, there is no possible way of keeping cases out of the Federal courts if a question of confiscation is really involved. A rate case may start before a State Commission and proceed upward to the highest court of the state; but it cannot be made to end there if a party believes that the decision results in the confiscation of his property. He has a right to go to the Supreme Court; and if the Supreme Court reverses the decision of the state court this is not an interference with a state right because the states do not have the right to confiscate property.

If we do not like that rule all we can do is to amend our Federal Constitution so as to permit the states to take our property, without due compensation. Perhaps it ought to be left to the people of the different states to say whether they want the law against confiscation abolished. If so the Constitution of the United States can be changed so as to allow each state to take such action as it pleases on that subject.

❦

A Utility Owner Gets No Better Service Than Any Other Customer

MR. A. R. Jacks owns and operates a small water company in Meadow Valley, California, used principally for irrigation purposes. Occasionally during the dry season there is shortage of the supply. Recently Mr. Jacks refused to supply water to certain customers unless they signed a written agreement to the effect that waters to be delivered were conceded to be surplus waters, and in the case of a shortage of supply, the rights of the consumer would be secondary in priority to the rights of said Jacks, himself. Most of the users refused to sign the agreement, and the California Commission in sustaining them, held that in the event of a water shortage, the owner of a utility, as a consumer, is entitled to no greater percentage of the waters available than any of the other water users. This principle is probably just as sound applied to other utilities.

Re Nail, Decision No. 20576, Application No. 14988, Case No. 2610.

❦

Propaganda For and Against the Utility Companies

A MARKED copy of a newspaper came to our desk the other day. It contained an editorial entitled: "Let Federal Government Aid. Its Full Power Needed to Drag Power Trust's Conspiracy into Light." The editor said, among other things:

> "But it will take nothing less than the power of the Federal Government in all three branches to drag into the light the clandestine conspiracy of this conscienceless monopoly to grab control of newspapers in other parts of the country and operate them as dummies of the Power Trust. . . . There is no mistaking the temper of the plain people in this vital matter."

At the head of this editorial the following statement is printed:

> "This Newspaper Is One of Twenty-eight Hearst Newspapers Read by More Than 20,000,000 People."

No one possessed of a sensitive conscience himself would rejoice over the ownership of a single newspaper or group of newspapers by men without consciences; but is there any such animal? According to Webster, conscience is:

> "The faculty, power, or inward principle which decides as to the character of one's own actions, purposes, and affections, warning against and condemning that which is wrong and approving and prompting to that which is right; the moral faculty passing judgment on one's self; the moral sense."

Conscience, then, is the moral faculty which passes judgment on one's own actions and not on the actions of someone else. When we say our neighbor has no conscience, all we mean is that our conscience does not approve the things his conscience does. It is our way of boasting that we are a little better than he is. All it amounts to is a difference of opinion.

A conscience test imposed upon a newspaper owner would at once destroy freedom of the press. It would get a lot of newspapers, owned by a variety of interests, into serious trouble. It is always dangerous to have the yard-stick of somebody else's conscience applied to our own actions.

The interests of the plain people must always be kept in mind of course in the publication of a newspaper, as well as in the promotion of any other enterprise; as the plain people, if those words mean anything, include most of the people of the country. We should say that as long as there are twenty-eight Hearst newspapers, read by 20,000,000 daily (and the number appears to be growing) the plain people would not appear to be in any immediate danger of corruption by publications under different management. Surely they will never be left entirely without a champion.

Responsibility of Utilities for Acts of Agents Against Regulation

IT is evident from an examination of early English authority that up to the closing years of the 17th century no definite theory as to the vicarious liability of a master for the acts of his servants or, as it is called in law, *respondeat superior* had been formulated. It is true that the ancient Bracton in his treatise on the laws of England tells of some instances occurring as far back as the 13th century where a master had to "respond" for

the wrongful acts of his servants. But such cases related mostly to the commission of some kind of wilful trespass by the servant or agent.

Labatt in his exhaustive work on "Master and Servant" says that the notion of a constructive responsibility predicated upon the existence of master and servant relationship was unknown before that period, and gives very impressive authority for his statement. This jurist says that the principle of *respondeat superior* first made its appearance in English law soon after the Revolution of 1688. Then, all judges in England appeared to follow the lead of Chief Justice Holt, who held, at that time, that the master was responsible for the negligence of his servant or agent as long as the latter acted within the scope of his authority.

Today, the doctrine of *respondeat superior* is firmly entrenched in our jurisprudence. Nobody ever thinks of suing the truck driver who knocked him down, or the motorman who pushed his automobile down the track. Persons suffering from civil wrongs today universally look for redress to the employer or master of the servant who wronged them.

An interesting question on this subject, however, is whether a utility is responsible in matters of regulation for the acts of its servants or agents. Of course, it is clear that a utility company is just as responsible as any other kind of a company for the wrongs or negligence of its servants in damage suits. But it is not at all clear whether a public service company will be penalized by the Commission for acts of its agents committed without its knowledge or consent, and violating regulations of the Commission.

The authorities are not in accord on this proposition. The New York Commission, for instance, has held that an electric company is responsible for the false representation of its duly accredited employee as to its rate schedule notwithstanding the fact that the schedule itself was open to inspection. This is contrary to the view of the Indiana Commission which holds that a telephone rate cannot be affected by the erroneous view expressed by utility representatives. It would seem to be the prevailing view, however, that where a servant or official of a public utility violates regulations without the consent of the utility, the latter should not be held responsible. For instance, a Federal Court has ruled that a New York statute making any officer, or agent of a utility who procures, aids, or abets it in its failure to obey orders of the Commission, guilty of a misdemeanor, contemplated a personal and individual act of such official, officer, or agent as distinguished from the mere failure of the company, itself, to obey the order. Likewise it has been held by the Washington Commission that a public utility should not be punished by a general reparation order because of deficiency in its service due to a strike where no negligence on the part of the company is shown.

Again, the drivers of a certain bus company in Indiana used to discriminate against colored people, refusing to pick them up when possible and generally failing to extend to them the same courtesy given to white passengers. The Indiana Commission ruled that these particular acts of law

were violations on the part of the motor bus drivers without the consent or connivance of the company and could not preclude the company from being a common carrier entitled to a certificate of convenience and necessity upon a proper showing.

Of course the company cannot escape liability for law violations of employees where it has consented to them, derived benefit from them or generally winked at them. There has been more than one case where an interstate bus company, brought up on charges of doing local business without a certificate, has sought to blame the drivers. The Missouri Commission has ruled that a company sharing in the profits of such unlawful transactions and at least in a position to know about them by proper inspection, could not be heard to repudiate the acts of its agents.

But this responsibility seems to depend on knowledge either actual or constructive of the utility concerning the acts involved. In some cases a utility cannot be held responsible where it has notice. Such is the case when the agent is a *free* agent which is to say that it acts beyond the control of the utility and upon its own responsibility. The Florida supreme court has held that a terminal company for instance, is not a mere agent or employee or contractual instrumentality of several railroads but is itself a distinct corporate entity, authorized to act in its own right and to render service under its own management.

But here again, the intermediate agent must indeed be a *bona fide* free agent and not an arrangement to evade regulation. It must appear to have either a separate corporate existence or at least some semblance of personal responsibility apart from the parent utility. Very recently a telephone company in Wisconsin found guilty of unlawful service extensions tried to blame the management of one of its divisions. The Commission in disallowing this plea stated:

"It was also contended that the company is divided into independent divisions over which the central company has no authority and that these divisions are responsible for any extensions or changes in their lines rather than the central company. While such an arrangement may have been made for the convenience of the various branches of the company, the articles of incorporation do not indicate any such organization, and it appears from the testimony that the members of all divisions have been considered eligible to vote at the annual and special meetings of the stockholders of the company."

It will be seen then from a consideration of the above instances that a utility will not usually be held responsible for acts of its servants, agents, or employees violating the regulatory law, where the company can prove that it did not encourage, consent, or acquiesce in such acts and where the company could not have known by reasonably diligent inspection that the violations were going on. Furthermore a utility will not be held for regulatory violations in any instance committed by an independent free agent subject itself to Commission discipline and, therefore, answerable for its own deeds.

Re Dekorra Farmers Mutual Teleph. Co. U-3779.

REGULATION MOVES ON

¶ Is "interstate commerce" the loop-hole through which many modern utilities are escaping from state regulation? If so what remedies are available? When is a utility engaged in interstate commerce? To what extent and by whom may it then be regulated? These and other questions on this technical phase of regulation are here discussed in a nontechnical fashion.

¶ Mr. Welch's conclusions are not based on personal speculations; he speaks only from the standpoint of reported authority.

By FRANCIS X. WELCH

With the strong trend toward the centralization of power in our Federal Government that has been going on almost continuously since the days of Alexander Hamilton,—"we the people of the United States" are apt to forget the fact that our constitutional theory of government assumes merely a union of the sovereign states and not an absolute merger of them.

It is so easy to forget today, when state lines are regarded as lightly as county boundaries, that these same states, which, according to some, are destined to be used merely as administrative units in the dispensation of governmental policies having an ultimate source at Washington, were once distinctly separate colonies united only for the purpose of self defense. For little short of the primary instinct of self preservation could have the effect of persuading the Puritan of New England to sit in the same war councils with the cavalier of Virginia, or make the Quakers fight shoulder to shoulder with the sons of Cecil Calvert.

This very revolt, it must be remembered, was a life and death struggle to throw off the ever tightening centralization policy of mother England as Edmund Burke so ably pointed out in Parliament at the time, but whether it be viewed with alarm, enthusiasm, or complacency, it is fairly safe to say that centralization of government in America is inevitable and will continue. It is only the normal legal evolution keeping pace with the constantly increasing commercial activity between the states. Nowhere is the fact more clearly demonstrated than in the field of public utility regulation.

Contacts between the colonists during the revolution did more than unite them politically. It bound them together socially and economically. When the great trouble ceased, the respective state identities of these former comrades at arms were merged into the broader distinctions of regions or sections such as New Englanders, Yankees, Southerners, or Westerners. New roads were built or

improved over the old war trails and, the physical isolation of the state thus broken down, commerce began to spill pell mell over state lines. Federal regulation of this business was imperative and small wonder it is that the new Constitution provided that "the Congress shall have power—to regulate commerce with foreign nations and among the several states and with the Indian tribes."

This was in 1789. What would Thomas Jefferson say if he could witness the vast significance of that clause in modern life?

That clause has by far, been the basis of more legislation and litigation that the rest of the Constitution put together, excluding of course, the subsequent amendments; and it is safe to say that public utilities playing as they have a major part in the enormous expansion of business between the states have been a very big factor in keeping the "commerce clause" in the judicial spotlight.

First of all there were the river vessels plying up and down the Mississippi and other inland water arteries. Then came the railroads tying every state and territory together in a steel network. Then came the wire network of telegraph and telephones. Today there is not a single type of utility, with a possible exception of those whose functions are necessarily local or stationary such as water companies or warehouses, that does not cross state line for at least an appreciable part of its total business, and in this connection gas and electric companies are of especial interest.

Gas and electric companies have been problems in interstate commerce only within the last two or three decades. Fifteen years ago the average electric plant could not "throw" current ten miles without line losses making the thing impracticable. Passing current across state borders was not thought of; the city plants had trouble enough getting it out to the suburbs. Likewise twenty-five years ago the long pipe lines from the natural gas fields of Oklahoma and into the cities of Kansas and Missouri existed only in the minds of a few dreaming engineers.

Today engineers are planning a 250-mile transmission line from the proposed Boulder Dam to the city of Los Angeles. More than 10 per cent of the entire volume of electricity generated in the United States crosses state lines, and the promise of future improvement in power transmission together with the demand for hydro-electric development of isolated sites seems sure to increase this figure. Likewise it has been estimated by reputable authorities that while somewhat less than 1 per cent of manufactured gas crosses state lines, possibly 16 per cent of all the natural gas distributed by public utilities is interstate in character. These figures tend to explode the idea if it still persists that gas and electric companies are wholly local in character, or that the so-called "common carriers" are the only utilities engaged in interstate

commerce to any extent. The regulation of this nomadic gas and electricity is in many ways far more complicated than the control over pure common carriers.

QUESTIONS of regulation in interstate commerce may be divided into three classes:

First: Is the subject matter "commerce" within the meaning of the Constitution?

Second: Is it "interstate" within the meaning of the same document?

Third: If it is both interstate and commerce, does the proposed regulation (assuming it should be by the state) constitute a burden on or interference with interstate commerce so as to infringe upon the exclusive power of Congress to legislate on such matters?

The first query is quickly answered in the affirmative for all public utility service and need not be considered any further here.

WHETHER or not a particular service is interstate in character has sometimes given a little trouble. It depends a great deal on the type of utility. It seems to be most complicated in the case of gas companies. Let us start with common carriers, which are the utilities that raise this question most frequently. Of course, by statute, a common carrier includes busses, railroads, electric railways, telephones, telegraph, commercial aircraft, pipe lines, and vessels. For this discussion, however, only busses and rail carriers are considered.

A carrier engaged in the business of transporting passengers or merchandise from one state to another is engaged in interstate commerce, no matter how much of the route lies within one state. A bus route in El Paso, Texas, to Shreveport, Louisiana, might be more than 99 per cent in Texas, but yet be interstate carriage which the state cannot regulate. Texas, it is true, *may* regulate the local business on the route. It can control, restrain, or even forbid carriage from El Paso or other Texas terminals for discharge at any other Texas point, but over that part of the cargo which is Shreveport bound, Congress alone has control.* Even though both terminals are within the same state such as a route between Kingston, New York, and New York city, the fact that the route crosses a small corner of New Jersey and exchanges cargo at New Jersey points makes the business interstate commerce and New York state may not interfere.†

OF course, the business and route must be really interstate in good faith. There are a number of instances where the courts and Commissions refuse to recognize the addition of unnecessary extensions to routes taking them a short way over state lines just in order to evade state regulation as placing the business in the category of interstate commerce. Such evasions have no such effect.

A typical instance occurred in Ohio where passengers at Cincinnati wishing to go to Toledo were sold by an interstate bus company tickets marked "Monroe, Michigan," which

* Boston & M. R. Co. *v.* Hart, 254 Mass. 253, 150 N. E. 212.

† Pine Hill-Kingston Bus Corp. *v.* Davis, 232 N. Y. Supp. 536.

Questions that Determine Whether a Utility Is Regulated as "Interstate Commerce:"

FIRST: *Is the subject matter "commerce" within the meaning of the Constitution?*

SECOND: *Is it "interstate" within the meaning of the same document?*

THIRD: *If it is both interstate and commerce, does the proposed regulation (assuming it should be by the state) constitute a burden on or interference with interstate commerce, so as to infringe upon the exclusive power of Congress to legislate on such matters?*

is just across the Ohio Michigan line. Those in Toledo wishing to go the other way to Cincinnati were likewise sold tickets marked "Covington, Kentucky," also just across the Ohio line. These passengers were assured that the price paid for the out-of-state destinations were just the same as if they had bought tickets properly marked Toledo or Cincinnati, respectively, and inasmuch as the busses did actually stop en route, passengers got off where they pleased. It will be easily seen that this is merely local commerce attempting to disguise itself.*

Railroads and street railways are subject to about the same rules as automobiles concerning what is, and what is not, interstate commerce. Of course since their capital investment is so much greater and their routes not so flexible, they have taken more care to be within the law both state and Federal, and so have not usually been open to questions with regard to subterfuge routes. Then, too, there is not much advantage for rail carriers claiming to be interstate operators since the Federal Interstate Commerce Commission regulates them just as strictly, if not more so than state Commissions, but it has happened.† Congress, however, has not as yet seen fit to regulate the interstate bus utility and so a motor line that can show itself engaged in interstate commerce is practically free from regulation as far as that commerce is concerned.

INTERSTATE commerce in gas (both natural and manufactured) and electrical energy may be classified in either one or the other of the two following groups, depending upon the circumstances surrounding the sale and delivery.

No. 1 is the case of a gas or electric company selling wholesale to another company or agency in another state for distribution and sale there, a supply which is delivered either at the state line or within the receiving state:

No. 2 is the case of a gas or electric company which sells directly to its own local consumers a supply which

* *Re* Detroit Cincinnati Coach Line, P.U.R. 1928C, 571.

† St. Louis S. F. R. Co. *v.* Alabama Pub. Service Commission, P.U.R.1928E, 613.

it has purchased or manufactured itself outside of the state and imported for purposes of such local sale and delivery.

The United States Supreme Court has gone to some pains to distinguish between these two classes of cases in the Kansas Gas Case,* which disclosed a set of circumstances belonging to the first class and then in the Pennsylvania Gas Company Case† which was an example of the second class, and finally in the Attleboro Electric Case ‡ in which both classes of cases were fully discussed and analyzed.

In the case last mentioned, the Narragansett Electric Lighting Company, generating current within the state of Rhode Island and selling it to customers in that state, also, had customers in the state of Massachusetts to which it delivered current at the state line under a contract rate. The company found after some time that it was losing money on its Massachusetts customers and asked the Rhode Island Commission to approve a new rate schedule amending the contract rate. The Supreme Court held that the Rhode Island Commission had no business interfering with the matter notwithstanding the fact that the Federal Government had not seen fit to legislate on the subject.

In the Pennsylvania gas case, on the other hand, a company was transmitting by pipe line a source of supply in Pennsylvania to a point in New York city for distribution and retail sale to local consumers. The Supreme Court held that in this instance, the New York Commission might regulate the rate charged to these consumers. The Court said that while a state might not directly regulate or burden interstate commerce it might in some instances, until the subject matter was regulated by Congress, pass laws indirectly affecting such commerce when needed to protect or regulate matters of purely local interest.

It will be seen that while both of the these classes of service are matters of interstate commerce, the first is within the exclusive jurisdiction of Congress while the second is subject to state regulation as long as the Congress does not take any action. It is very important, therefore, in dealing with gas and electric cases to find out whether the interstate commerce consists in wholesaling of such energy to another company or agency for subsequent sale and delivery to consumers or simply the furnishing of service "essentially local in its nature" directly to consumers although using an imported supply.

Discussing the reason for this distinction in the Kansas Gas Case the Supreme Court says:

> "The paramount interest is not local but national,—admitting of and requiring uniformity of regulation. Such uniformity, even though it be the uniformity of governmental non-action, may be highly necessary to preserve equality of opportunity and treatment among the various communities and states concerned."

Thus we have seen two types of interstate commerce with relation to gas and electric service. How about such commerce which is not inter-

* 265 U. S. 298, P.U.R.1924E, 78.
† 252 U. S. 23, P.U.R.1920E, 18.
‡ 273 U. S. 83, P.U.R.1927B, 348.

The Two Classifications of Gas and Electric Utilities

Interstate commerce in gas and electrical energy may be classified in either one or the other of the two following groups:

NUMBER ONE: *The gas or electric company that sells wholesale to another company or agency in another state for distribution and sale there, a supply which is delivered either at the state line or within the receiving state.*

NUMBER TWO: *The gas or electric company which sells directly to its own local consumers a supply which it has purchased or manufactured itself outside of the state and imported for purposes of local sale and delivery.*

state if there is such a thing at all?

The answer is comparatively simple. If gas or electricity in a commercial way crosses state lines at all it becomes interstate commerce. There have been no examples of any attempted subterfuges for the simple reason that even if a gas or electric company were foolish enough to run a main or transmission line over the state border and then run it back in again, the maneuver would avail them nothing. The local Commissions can regulate all local service and only such customers as would be actually served from the "over-the-border extension" would be exempt from such regulation.

THE telephone and telegraph company's service in interstate commerce is sometimes a little complicated, but the problem is chiefly a matter of bookkeeping and apportionment. The principle is fairly clear. While such national companies as the American Telephone & Telegraph Company are principally engaged in interstate commerce, nevertheless every company which has access to interstate connections (and it would be a fairly worthless company which did not have such connections) is an interstate utility to the extent that it handles interstate calls, whether incoming or outgoing. Local business is, of course, local business and subject to state regulation. These companies, therefore, must keep the records of interstate business apart from local business so that the State Commissions may be in a position to regulate the purely local features of their service. It will be seen from this that such long distance calls or messages as might be within the state are subject to the regulation of the State Commissions, such as the rates and service of telephone calls between Oklahoma City and Poteau in the same state. But the Oklahoma Commission can regulate neither the rates nor service of messages going over the line to Fort Smith, Arkansas.*

* *Re* Oklahoma-Arkansas Teleph. Co. P.U.R.1928E, 737.

So much for interstate commerce by the various types of utilities.

WHEN does state regulation burden or interfere with interstate commerce so as to be constitutionally invalid?

The power of Congress over interstate commerce is absolutely exclusive. The states may not interfere, invade, or restrict its jurisdiction even though Congress itself has not seen fit to act upon the matter involved. This is what the Supreme Court meant in the Kansas Gas Case (*supra*) when it speaks of such interstate commerce "requiring uniformity of regulation, . . . even though it be the uniformity of *governmental nonaction,* may be highly necessary to preserve equality of opportunity," and so on.

Thus, while motor, gas, and water utilities in interstate commerce have escaped active Federal regulation, rail carriers and agencies for communications have been regulated by the Interstate Commerce Commission. The new Federal Water Power Act gives the Federal Power Commission power to regulate rates and services of electric companies seeking to develop hydraulic sites; but electric companies generating current by fuel are not regulated, although there has been some recent agitation for such regulation.

But can the state do nothing with interstate commerce? Where Congress has not acted must there always be maintained the "uniformity of governmental nonaction?"

In certain cases the states may regulate in the exclusive field of interstate commerce, but only where Congress has not acted upon it. In other cases the exclusiveness of Congressional jurisdiction will not permit the slightest act by the state. The distinction between these two classes of interstate commerce is by far the most important in the entire law on the subject. The underlying principle for this distinction has already been suggested in the analysis of gas and electric companies.*

Here is the difference:

1. The power to regulate commerce among the states is a unit but if particular subjects within its operation do not require the application of a general or uniform system, the states may legislate in regard to them with a view to local needs and circumstances.

2. Where the subject matter requires a uniform system as between the states, the power controlling it is invested exclusively in Congress and cannot be encroached upon by the state.

STATED in a different way, where, in relation to the subject matter involved, different rules may be suitable for different localities, the states may exercise powers which although they may be said to partake of the nature of the power granted to the general government, are strictly not such but are simply local powers which have full operation unless and until circumscribed by the action of Congress. On the other hand, where commerce generally is likely to be affected by any regulation by the state, however slight, the power of Congress is exclusive and the failure of Congress to make express regulations indicates its will that the subject shall be left

* Minnesota Rate Cases, 230 U. S. 352.

free from any restriction or imposition, and any regulation of the subject by the state except in matters of local concern only is repugnant to such freedom.*

So much for general principles. It will at once be seen that this distinction is too broad to be of any comprehensive assistance without a great deal of judicial interpretation. What constitutes local matters? What needs a general and uniform system? How far can the state go on local matters? These and many other questions immediately arise and the judgment of the court on each particular situation is the only acid test.

To describe a few of these tests, let us take the utilities up in order again starting with the automobile.

THE states can regulate on police matters concerning interstate busses; careful operation in accordance with local traffic laws; proper registration; payment of taxes; safety inspection; qualified drivers, and indemnity insurance may be required in the exercise of these police powers. Although the state cannot refuse to such companies the authority to operate throughout its domain it can at least, require them to make formal applications for such authority even though it must be granted as a matter of course. Furthermore the state may even cancel these certificates because of persistent violation of local laws such as traffic regulations or continued violation of restrictions from doing local business.† And of course, the states can regulate local business done by the interstate carriers to their hearts' content.

These are all local matters. What would be a general matter beyond the power of the state to regulate regarding interstate busses?

It has been held that the state cannot set a test of financial responsibility granting interstate certificates.* And of course, the state cannot harass or discriminate against the service of interstate busses even under the guise of taxation or police regulation, or attempt to prevent their free operation throughout its domain under the same terms and conditions as local busses function.†

IT must be remembered, however, that Congress has not yet regulater commercial automobiles. The state might, therefore, regulate local conditions. With railroads, on the other hand, Congress and its agent, the Interstate Commerce Commission, has been more particular and, therefore, the states must keep hands off any matter upon which there has been Federal legislation.

Concerning the whole subject of rates for utilities engaged in interstate commerce, the state has absolutely nothing to say. Concerning the fundamentals of interstate service on railroads and electric railways the state is likewise powerless to regulate wherever Congress has laid down regulations inconsistent therewith. Thus, it has been held that the imposition by a state upon connecting carriers of the duty of tracing freight and informing the shipper of the cir-

* Southern R. Co. *v.* Reid, 222 U. S. 424.
† Detroit-Cincinnati Coach Line *v.* Public Utilities Commission, P.U.R.1929B, 335.

* Hi-Ball Transit Co. *v.* Railroad Commission, P.U.R.1928E, 103.
† Interstate Busses Corp. *v.* Blodgett, P.U.R.1928C, 144.

cumstances under which freight was lost was a violation of the Federal Constitution.* Likewise there is an interference with interstate commerce when a State Commission orders an interstate railroad to stop its trains at a specified county seat when such a county seat is already properly supplied with adequate service.† A regulation of a state requiring railroads to start interstate passenger trains on time is also invalid. In short anything which the state might do to interfere with interstate train service, such as the enforcement of unreasonable speed regulations which would hold up through traffic or compelling the establishment of unprofitable agency stations so as to impair the utility's finances is a burden on interstate commerce.

Another example of this incidental interference with interstate commerce by a state would be a requirement by a state body that an interstate railroad share the expense of the erection of a city union station where there is no indication that the local business done by the railroad warrants such an expenditure. The theory of these rulings is that the state may not cripple interstate carriers by requiring them to employ an unreasonable amount of funds in local improvements to the detriment of their interstate service.

On the other hand, a state cannot be said as a matter of law to have imposed an unconstitutional burden on interstate commerce by forbidding any change in the location of machine shops, round house, and other structures by a railway which has agreed to maintain them in a designated county in consideration for receiving county aid. This is because of the contractual aspect of this situation.*

In respect to telephones and telegraphs little need be said. The state has no authority to regulate the transmission of telegraphic messages into other states and for delivery therein as such authority would constitute interference with interstate commerce.† Any tax for the occupation of interstate telephones or telegraph lines or any license requirement for such lines is unconstitutional and void.‡

The state, however, may regulate local service even though such exchanges are connected to long distance lines. These regulations must not unduly burden or discriminate against interstate messages. Over lines actually extending across their borders, of course, the states have no control except to see that they are erected safely and properly.

We have seen already that states may regulate local rates of certain interstate gas and electric companies, whereas in other situations such regulation would be a burden on interstate commerce. The regulation of service of such companies is just about analogous to the regulation of rates. The states may not prohibit the construction of pipe lines or transmission lines for interstate commerce

* Central of Georgia R. Co. *v.* Murphy, 196 U. S. 194.
† Mississippi R. Commission *v.* Illinois C. R. Co. 203 U. S. 335.
* International & G. N. R. Co. *v.* Anderson, 246 U. S. 424.
† Western Union Teleg. Co. *v.* Pendleton, 247 U. S. 105.
‡ Leloup *v.* Mobile, 127 U. S. 640.

1. The power to regulate commerce among the states is a unit, but if particular subjects within its operation do not require the application of a *general or uniform system,* the states may legislate in regard to them with a view to local needs and circumstances.

2. Where the subject-matter requires a *uniform system* between the states, the power controlling it is invested exclusively in Congress and cannot be encroached upon by the state.

and where it requires that its authority be granted for such construction by an application for certificates, such authority should in fact, be granted whenever asked by such companies.*

Water companies, warehouses, and other utilities are usually so local in their operation that their activities in interstate commerce such as they are have not been before the courts.

PROBABLY one of the biggest problems concerning the regulation of utilities engaged in business between the states is the holding company. Pure holding companies (that is to say, those that do not themselves engage in actual operation), cannot be regulated by either State or Federal Commissions for the simple reason that they are not even public utilities. Of course they are subject to the mere formal corporate control such as might be exercised over any other private corporation, but their holdings, influences, and contracts, in connection with public utilities are not open to questions by utility regulatory bodies. It has been claimed that these companies are used to evade regulation; it has been claimed that corporate affiliations between distributing and supply companies constitute a loop hole in our present system of regulation.

Is this true?

Let us examine the evidence and decide accordingly.

The economic structure of our modern utility business demands the existence of the holding company and the State Commissions have recognized the fact many times.* An excellent example is furnished by the examination of the growth of the telephone industry in America which has been so clearly bound up with destinies of the American Telephone & Telegraph Company. Without the intercorporate control as exercised by this company over local companies the splendid co-ordinated long distance service now existing in America would be impossible. Speaking of this the Maryland Commission states:

> "Originally the parent company was a patent-controlling organization which encouraged the formation of local operating companies. The parent company received rentals and royalties from, and frequently had stock holdings in, the local company. The telephonic art had not developed

* West *v.* Kansas Nat. Gas Co. 221 U. S. 229.

* See article on Holding Companies, P.U.R. Fortnightly, July 12, 1928, p. 12.

sufficiently to permit talking between the exchanges in the different states, and when scientific discovery and inventive genius had made long distance telephonic communication possible, the local companies were either unwilling or financially unable to build the heavy lines required. The parent company, therefore, strung the wires and supplied the specially adapted equipment. Thus came about the difference in the ownership of the long distance from the local service lines. The weakness of the local companies in resources and service as well as the advantages of a strong central organization brought about the gradual but eventual gravitation of the control or ownership of the local companies to the parent company, and there emerged the giant Bell System with the powerful American Telephone & Telegraph and its many associated companies." *

THE Commission then points out that the parent company is engaged in interstate business and is subject to control by the Federal Commission, while the local companies engaged solely in intrastate business is subject to the State Commission. Then comes the assertion:

> "In the opinion of this Commission such a plan of regulation is ideal in the case of a monopoly of this kind and criticism of such a form of organization becomes in effect a condemnation of regulation itself."

THIS is a very pretty picture that the Maryland Commission paints, but the Missouri Commission paints the same subject in quite another light. Here are the bare facts:

For a number of years a certain company which we will call the Distributing Company has distributed natural gas in the vicinity of a certain Missouri city. Now the Distributing Company has been buying its supply, delivered at the state line, from a wholesale interstate company which we will call the Supply Company. In previous proceedings the Commission was told by no less an authority than the United States Supreme Court that it had no right to interfere with the rates fixed in the supply contract between the Distributing Company and the Supply Company.

There were strong indications that both companies were corporately associated through certain interests which we might call the Holding Company. The Commission felt that this situation permitted a possibility of an evasion of state regulation in this manner. If the Distributing Company had contract rates with the Supply Company that could not be questioned by the local Commission because it would be a burden on interstate commerce then the Distributing Company, directed by its parent the Holding Company, could make a contract giving the Supply Company as high a rate as the Holding Company pleased to impose, within reason. The local consumers of the Distributing Company would have to pay to it sufficient rates to take care of this expense.

Of course, the Distributing Company would make no more and possibly less than a fair return, but every cent paid out by the Distributing Company to the Supply Company would find its way into the pockets of the Holding Company just as surely as if they had paid it indirectly to the Distributing Company.

After the refusal of the highest

* *Re* Chesapeake & P. Teleph. Co. P.U.R. 1920F, 417.

court to permit the Missouri Commission to regulate the rates between the Distributing Company and the Supply Company,* the Missouri Commission apparently felt that the rights of state consumers were not being safeguarded as well as could be desired, and recently when an independent company entirely subject to the jurisdiction of the Commission asked for authority to operate somewhat in competition with the existing company, the Missouri Commission granted authority gladly. Then the Distributing Company claimed that the policy of the state required the Commission to protect the monopoly of existing utility against competitive service. The Commission decided, however, under the circumstances that the Distributing Company was not such a guarded monopoly as would be entitled to the protection of the Commission from competition.† The opinion states:

> "It may be said that the prevailing policy in the state regulation of public utilities is to favor regulated monopoly rather than to encourage competition. But this is by no means an absolute and unvarying rule. In its application it is designed to protect and promote the best interests of the public, and when it fails to do this there is no reason why this policy should be followed."

It would seem, therefore, that a state would have the right to withdraw protection of existing utilities from competition if it were deemed wise since freedom of competition is a privilege, and not a right that is guaranteed by either Federal or State Constitutions, except in such cases where it is granted by way of franchise.* It will be noted, however, that the decision of the Supreme Court in this case falls in line with the principles outlined for such a situation in the beginning of this article.

But Missouri is not the only state that has been having difficulty with the interstate holding companies in public service regulation. Very recently an action was brought in Michigan for the purpose of ousting the Michigan Bell Telephone Company of its franchise on the theory that the business in the state was really being conducted by the American Telephone & Telegraph Company. The real bone of contention was the contract which the American Telephone & Telegraph Company makes with all of its subsidiary local companies giving the parent company an annual allowance of 4 per cent of the gross revenue as compensation for administrative and other services.

This contract has been under attack by different Commissions and courts on previous occasions but finally received an endorsement of reasonableness of the United States Supreme Court in the Southwestern Bell Telephone Company Case.† The Michigan court, however, found a different way around the problem; instead of questioning the reasonableness of the contract it was decided that there simply wasn't any contract at all. The court held that insomuch as the Michigan Bell Telephone Company was controlled to the extent of 99 per cent by the American Telephone &

* State ex rel. Barrett *v.* Kansas Nat. Gas Co. 265 U. S. 298, P.U.R.1924E, 78.
† *Re* Industrial Gas Co. P.U.R.1929A, 516.

* Frost *v.* Oklahoma, P.U.R.1929B, 634.
† 262 U. S. 276, P.U.R.1923C, 193.

Telegraph Company, the corporate existence of the local company was merged, and the corporate fiction could be disregarded for the purposes of securing fairer rates to local consumers.

The theory of this action, of course, is that where a local company is the same as the national company with whom it is contracting, any contract between such parties is void, since it is a very fundamental concept of the law that there must be at least two parties to every contract. To say that this decision will or will not stand up on appeal would be at this writing mere speculation.

THE regulation of these interstate companies in this manner will have a far reaching effect if the Michigan decision is sustained. It involves the important legal question of disregarding corporate fiction. A corporation is in the eyes of the law a fictitious person with about every right a natural person has except making a will, getting married, or thrown into jail. Nevertheless the courts have always looked behind the corporate entity where its creation has been used to disguise a fraud, and it would be difficult to say that actual fraud existed in these cases.

But there are other instances beside those involving fraud where the courts will look behind the corporate veil. "It is a certain rule," said Lord Mansfield when Chief Justice of England,* "that a fiction of law shall never be contradicted so as to defeat the end for which it was invested but for every other purpose it may be contradicted."

* Johnson *v.* Smith, 2 Burr. 962.

SOMETIME ago a man named Berkey was injured on the cars of the 42nd Street Railway Company, and recognizing the inability of that company to pay, he sued the parent, the Third Avenue Railway Company.* After conceding that substantially all of the stock of the subsidiary was owned by the parent and that the former was dominated in every way by the latter, the court of appeals of New York refused to pierce the corporate veil and say that the 42d Street Company was a mere dummy or *alter ego* of the parent to the extent of making the parent liable for torts of the subsidiary. A powerful dissenting opinion was written by Judge Crane in which Judge Pound concurred.

Now on the other hand in Northern Securities Co. v. United States † where a corporation was organized merely as a convenient means of combining separate railroad properties under one control, the highest court shook aside the corporate entity and regarded the combination as direct a "restraint of trade by destroying competition as the appointment of the committee to regulate rates." The Michigan court apparently thinks that if the subterfuge of incorporation cannot defeat the purposes of the Sherman Anti-Trust Act, therefore it cannot be used to evade the regulation of local utilities by State Commissions through the use of contract for compensation between the parent and subsidiary—assuming of course that this contract was an evasion.

* Berkey *v.* Third Avenue R. Co. 244 N. Y. 84.

† 193 U. S. 197.

BUT where is the line to be drawn between the *Berkey* case and the *Northern Securities* case? If the corporate entity is to be protected in one and disregarded in the other, and if such eminent jurists as Judges Crane and Cardozo disagree even on these holdings, how can the mere layman or for that matter, mere lawyers, determine when a utility is justified in dominating another and when it is not? Professor I. Maurice Wormser, of Fordham University in his book on the "Disregard of the Corporate Fiction," comments as follows:

> "Now, of course, it is often extremely difficult to draw the line. Whether the majority or minority judges in cases as close as the Berkey case are correct is a problem upon which reasonable men may reasonably differ. So long as the courts recognize the general principal that the corporate fiction must not be employed so as to defeat the end for which it was invented, it does not make such vast difference how any particular case is decided, for out of the facts the law arises, and on factual situations judges will always differ."

To summarize, therefore, let us remember that a problem in interstate comerce regulation belongs to one of three classes:

1. Is it *commerce?*
2. Is it *interstate?*
3. If it is both commerce and interstate, to what extent may it be regulated, if at all, and by whom?

These classes are like elimination tests, so that if a problem reaches the third class it is necessary to determine in which of two groups it belongs:

1. Matters of purely local character concerning which Congress *has not* acted:

2. (a) Matters of local character concerning which Congress *has* acted.

(b) Matters requiring a *general system of regulation or nonregulation* regardless of whether or not Congress has acted. We have seen that the states may regulate in situations falling in the first group but may not regulate on situations falling into either subdivision of the second group.

Finally there is considerable question as to whether local companies having supply contracts or other contracts for the payment of money to interstate utilities may not by means of intercorporate relations evade strict state regulation. Attempted remedies for this situation by the states have taken two forms. (1) The encouragement of competitive enterprise and the refusal to protect the monopolies of utilities suspected of having intercorporate affiliations with interstate companies with whom they contract. (2) Disregard of the corporate fiction between the dominating interstate parent and the local subsidiary thereby bringing the parent into the jurisdiction of the local Commission for regulation of all matters of local service. The validity of this latter practice has been questioned but still stands at this writing.

BEFORE closing there should be some explanation of what all this interstate commerce law has to do with the centralization of governmental power mentioned in the beginning. The connection is just this.

We have seen how the Federal Government has moved steadily from the regulatory control of railroads to that of telephones and telegraph companies in interstate commerce, at each

step dislodging the regulatory powers over local matters previously assumed by the state agencies. This development has been co-extensive with the growth of the utilities themselves. It is not the result of a policy. It is just an inevitable incident in the inexorable progress and expansion of the utilities.

In fact, some say that the Federal Government is lagging behind the march of interstate business and that the commercial motor utility for instance should have been regulated long ago. The new Federal Water Power Act gives to the Federal Power Commission the privilege of regulating rates for local distribution of hydroelectric energy *even in the very states* in those places where the states themselves have not regulated the matter. This is done by means of contractual relationship between the government and the utilities seeking power permits, according to the explanation of Major C. L. Call, chief counsel for the Power Commission; but it is regulation of *intrastate* commerce none the less and by the Federal Government.

IN other fields we have witnessed the steady advance of centralization. Highway construction used to be a matter purely for the sovereign states to worry about and it still is—theoretically. Now Uncle Sam, with his Federal aid projects, says to the states:

"Let me tell you how, when and where to build these highways and I will help pay for them."

The same thing has happened in public health measures and the same thing promises to occur in education and agriculture. The states gladly surrender sovereign powers in return for financial aid. The states gladly reply to Uncle Sam's offer:

"You take the authority and give us the results."

And so the Federal Government has crept into local affairs by means of the "contractual relationship."

Of course "we the people of the United States" pay for it all just the same whether through Federal taxes or state taxes. But maybe centralization in some matters has resulted in cheaper and better jobs. It certainly has resulted in better and standardized highways built with an eye to the trend of national and regional highway traffic rather than purely local needs. No one who drives an automobile will deny that. However when we apply this centralization to utility regulation will the job be better done by a Federal Board or a State Commission?

SOME years ago we abandoned the idea of home rule. City and town boards and commissions were not big enough to deal with such a complex economic problem as utility regulation and deal with it intelligently. It is well settled that state regulation is much superior to home rule. But are we even outgrowing that? Some who have thought about this matter insist that we have not and that the powers of the State Commissions should be jealously guarded.

Meantime, whether we like it or not, the power of regulation, in direct proportion to the increasing volume of utility business in interstate commerce seems, to this writer at least, to be steadily moving towards Washington.

The New Laws for the Regulation of Utilities

A summary of recent legislation that affects the jurisdiction of the state regulatory bodies

By RICHARD LORD

THE legislatures of a number of the states have adjourned, but as yet no radical changes have been made in any of the regulatory laws. Several of the state legislatures are still in session at the time of this writing.

No legislation has yet been passed that is designed to give the Commissions a more extensive jurisdiction on holding companies. Several acts to restrict Commission jurisdiction were defeated. New York appears to have been the only state in which any serious attack was made on the work of the Commissions.

Following is a summary of recent legislation affecting the jurisdiction of State Commissions:

District of Columbia

No legislation was passed in the last session of Congress in any way affecting the jurisdiction of the Public Utility Commission of the District of Columbia over public utility companies. The Commission has approved and submitted to Congress a merger plan affecting the two local street railway companies. The plan was investigated by Dr. Milo R. Maltbie, employed by the Senate District Committee. This committee has thus far failed to report favorably on the merger plan as submitted.

Idaho

THE only new legislation which concerns the Public Utility Commission of Idaho is an act placing the regulation of the bus lines under the jurisdiction of the Commission, and another which relates to grade separation crossings. The latter act provides that in case the Department of Public Works cannot agree with the railroad authorities as to the cost or manner of constructing the grade crossing, it shall be referred to the Public Utilities Commission for determination.

Maryland

SEVERAL bills affecting the Maryland Public Service Commission were passed at the recent session of the General Assembly. One act authorizes the Commission to regulate such matters of interstate commerce for which Congress has not yet made provision. It was formerly prevented from doing so by its own statutes. Another law is intended to place upon an applicant to the Commission for permission to exercise franchises, or to transfer or lease franchises, or to purchase stock of a public utility, the burden of showing that the granting of the permission, approval, or authority is required by or consistent with the public interest. This is to remove the disability under which the Commission labored, by reason of certain court decisions, hold that of not being able to disapprove of proposed consolidations of utility companies un-

less shown to be detrimental to the public interest. Another law authories common carriers other than railroad or street railway corporations to acquire the capital stock of other common carriers with the consent of the Commission. Another law gives the Commission jurisdiction over toll bridges even though they may be located wholly within one county. Senate Bill 188, which was designed to give the Commission more direct and complete jurisdiction with respect to holding companies was defeated.

Montana

A law has been passed in Montana placing under the supervision of the Board of Railroad Commissioners all motor transportation within or without the corporate limits of the cities or towns. Formerly the jurisdiction of the Commission extended only beyond the corporate limits of the cities or towns. This new law has the effect of requiring all bus companies of this kind to file liability and property insurance for the protection of the public. A bill designed to give the Commission supervision of pipe line carriers of natural gas for sale to distribution utilities in cities or towns failed to pass. The jurisdiction of the Commission at the present time does not extend beyond a distributing company. The Commission is consequently not authorized to make a full and complete investigation as to the source of supply. Another bill, attempting to define a public utility a little more clearly, was defeated.

Nevada

The 1929 session of the Nevada legislature made several changes in the Public Service Commission Act. One amendment requires that all hearings of the Commission shall be held at Carson City, unless otherwise ordered by a resolution of the State Board of Examiners. Another amendment requires motor vehicles and aircraft carriers to be covered by adequate indemnity bonds or insurance, the amount to be within the discretion of the Commission. The act before amendment provided for indemnity bonds and fixed a minimum of $500 and a maximum of $10,000. The amendment also provides for co-operation with the Federal bodies in working out rules to cover, principally, radio and aircraft operations. The Motor Vehicle Common Carrier License Act has been amended so as to provide that the license shall be collectible annually in one sum instead of semi-annually. No change is made in the amount of the license which applies to all motor vehicle operators for hire outside of the limits of a city or town, regardless of whether their operations can be classified as those of a common carrier. The act before amendment provided that the license was payable only on such vehicles as were operated as common carriers.

New Mexico

At the recent session of the legislature of New Mexico which convened January 8, 1929 and adjourned March 8th, several bills affecting the jurisdiction of the State Corporation Commission were passed. These laws were as follows: Senate Bill 17, an act relating to aviation in general; to aircraft, their construction, design and airworthiness, to qualifications of aircraft operators, to common carriers through the air, to licenses for such aircraft, their operators as common carriers, and to air commerce regulations and air traffic rules and violations of the act, and penalties for such violations; Senate Bill 35, an act to prohibit the wrongful interference with telegraph and telephone lines and messages and to provide penalties; House Bill 65, an act amending Laws of 1921 providing for the sale or lease of water and light plants, waterworks and sewer systems and necessary buildings and property belonging to said municipal corporations and for other purposes; House Bill No. 129, an act providing for hearings before the State Corporation Commission in connection with the discontinuance of railway stations, agents, or agencies; House Bill No. 155, an act

giving the Commission jurisdiction in relation to irrigation districts where water is secured by pumping by electrical power or otherwise; and House Bill No. 249 which relates to the supervision and regulation of motor vehicles and provides for compensation to be paid for the use of the highways in carrying on such business. Legislation introduced, but defeated, included a proposal to regulate ice companies by the Commission.

New York

THE greater part of the bills introduced in the legislature affecting public utilities failed of passage. Among these bills were the New York transit control bill, the governor's water power plan, the bill regulating submetering of electric current, and the bill for a subpassenger traffic inquiry by the port authority.

A bill was passed, however, to create a commission to investigate the public service law. Another bill was passed to provide for the reduction of expense to localities in the matter of eliminating railroad crossings at the grade of highways.

The Public Service Commission Law was amended by a provision authorizing the Commission to permit street railroads or steam railroad corporations to operate busses wholly or partly in place of or supplemental to railroad operation, provided local consents are obtained. It is further provided that after an order permitting substitution of busses is made contracts may be made, subject to approval by the Commission, for the use of respective routes upon which busses may be operated.

Another amendment relates to the acquisition and holding of the securities of railroad corporations and securities of corporations formed by the merger or consolidation of railroad corporations. A further amendment increases the period of reimbursement of steam corporations from five to ten years, under a section of the law authorizing the issue of securities for the reimbursement of moneys expended from income or from any other moneys in the treasury of the corporation not secured or obtained from the issue of securities.

Gas or electric, or gas and electric, corporations, will be permitted under another amendment to the Commission Law to acquire and hold more than 10 per cent of the capital stock issued by a steam corporation.

North Dakota

SEVERAL acts affecting the regulation of public utilities were passed at the last session of the legislature of North Dakota. The law which requires public utilities to secure a certificate of public convenience and necessity before commencing the construction or operation of any public utility plant was amended. The act originally provided that utilities must secure the certificate from the Commission before commencing to exercise rights under the franchise. This clause provided that a certificate issued by the Commission was in effect only as long as the franchise held by the utility for a particular town was in effect. The act is amended so as to provide that a utility company need not secure a certificate from the Commission in order to exercise its rights under a franchise hereafter granted, where it has not suspended operation of its plant and where the franchise merely replaces or renews an expiring or expired franchise. The amendment is effective on July 1st. The Auto Transportation Act providing insurance requirements for motor bus and truck operators has also been amended. The act in addition to providing that the operator must have liability, property damage, and cargo insurance in the amounts to be determined by the Commission, requires that the insurance policies or bonds shall guarantee the payment of any final judgment obtained against the insured for death or injury to persons, or loss or damage to property, in the amounts specified in the policy, resulting from the negligence of the company. The law as amended now provides that in addition to requiring the operator to

file insurance policies or bonds, the insurance policy shall guarantee the payment of any loss or damage to property, or death or injury to persons, not exceeding the amounts determined by the Commission; and, in any action for damages resulting from the negligence of the company, the insurer, or surety, shall not be joined as a party defendant, and that the fact of the ultimate liability of such insurer, or surety, shall not be disclosed or commented upon to the jury; but that upon final judgment the insurer, or surety, shall become directly liable to the owner of such judgment for the full amount but not exceeding the amount of the insurance policy or bond applicable to the loss. Another law empowers townships, cities, and villages to purchase, erect, operate, sell, or lease any electric power plant, distribution system, or other service, for the purpose of furnishing heat, light, and power, and for communication purposes, after the project has been approved by the majority of voters at an election. The law also provides that the cost may be paid out of earnings of the plant or system, or by issuing special assessments warrants, or by issuing bonds, or partly by special assessment warrants, partly by bonds, and partly out of earnings. The law also provides that when the cost of enlargements or extensions are to be paid out of earnings, and does not exceed $5000, it shall be unnecessary to submit the project to the voters. Another law provides that the board of trustees of any village shall have the power to provide for the lighting of all streets, public grounds, etc. and to provide by contract, not to exceed ten years, for the furnishing of electric energy or gas to the village for lighting, power, or other village purposes, and to the inhabitants of the village provided that nothing in the law shall be construed to deprive the Board of Railroad Commissioners of any of its existing regulatory powers with reference to such contract rates.

The North Dakota legislature also passed a bill which gives the Commission jurisdiction over the licensing of air men and aircraft in the state. Public aircraft owned by the government of the United States or by the state is exempted.

Oklahoma

No legislation was passed at the recent session of the Oklahoma legislature affecting public utilities. There were several bills introduced looking to the repeal or amendment of some of the utility statutes, however. One bill was for the repeal of the revocable permit act. Neither House ever finally considered this proposition. It, therefore, died without action. Another bill was for the repeal of the law subjecting manufacturers and distributors of ice to the jurisdiction of the Commission. This bill passed the House but was never considered in the Senate. There was some proposed legislation to eliminate merchandising by public utilities, but this was not considered by either House.

Oregon

At the 1927 session of the Oregon legislature a law was enacted requiring the Commission to receive a fee of $5 in connection with the filing of any annual report of any public utility or railroad and a fee of $2 to cover the filing of tariffs, time schedules and supplements. At the last session of the legislature the act was amended so as to exclude the requirement of these fees in respect to reports and schedules relating solely to Interstate Commerce. There has always been on the statute books in Oregon a law requiring every railroad company to file with the Commission on the first Monday in February of each year a verified list of all railroad tickets, passes and mileage books issued free or for other than actual bona fide money consideration, and full established rates during the preceding year, together with names of the recipients. This act was amended at the last session of the legislature so as to require railroads to do this only for a period of two years after the issuance of these tickets, passes or mileage

books. A law requiring that a railroad shall not cross highways at grade without the consent of the Commission was repealed. The Automotive Act relating to the licensing and regulation of motor vehicles using the public highways for hire was amended in several respects. The main change by the new law being a requirement that the collection of the statutory fees be transferred from the Commission to the secretary of state. The new law does not become effective until January 1, 1930.

South Carolina

In South Carolina a concurrent resolution was passed appointing a committee to study the question of rates of all power companies in this state. The South Carolina Railroad Commission does not have jurisdiction over the rates of these companies. The committee is to be composed of one Senator, to be appointed by the president of the Senate, a member of the House of Representatives, to be appointed by the speaker, and a private citizen, to be appointed by the Governor, together with a member of the Railroad Commission, to be appointed by the chairman of the Commission. This committee is to study the question during the year and report at the next session of the General Assembly whether or not it will be wise to have a thorough investigation made as to the rates of all power companies furnishing light and power in the state, and their recommendation as to what such an investigation would cost.

Tennessee

A Motor Vehicle Regulatory Act has been passed by the legislature of Tennessee. This act provides for a certificate to operate and for indemnity bonds, and provides that the Commission shall promulgate proper rules and regulations governing service and rates.

Utah

The Public Utility Laws of Utah were amended at the recent session of the legislature so as to authorize the Public Utilities Commission to order reparation for unjust, unreasonable, or discriminatory charges, and to provide for their collection, and so as to authorize the Commission to charge and collect certain fees for filing applications for certificates of convenience and necessity, for copies of papers and records.

Washington

Several acts were passed by the legislature of the state of Washington affecting the Department of Public Works. A law was enacted providing for a fee of one-tenth of one per cent of the annual gross operating revenues of all public service companies subject to the jurisdiction of the Department except auto transportation companies and certified steamboat companies. The latter companies were omitted because the auto companies now pay a fee of 1 per cent and the steamboat companies of one-fifth of one per cent. The moneys earned by this new fee bill go into the Public Service revolving fund and will be used to help defray the costs of the Department. A provision of the Public Service Commission Act making tow boats common carriers subject to the regulations of the Department was repealed. A bill designed to make valuations of public service companies by the Department admissible for tax purposes was defeated, as was also a bill providing a speed limit of thirty miles an hour for auto stages. The speed limit in Washington for automobiles is forty miles an hour.

West Virginia

The legislature of West Virginia has passed a new "Water Power Act." This act authorizes the granting of licenses for water power development to private enterprises.

The Commission is authorized to make investigations concerning the utilization of the water resources; to hold hearings in connection with applications for licenses; to prescribe rules and regulations; to examine and audit the books of corporations receiving licenses and to regulate the rates to consumers of electricity and other power produced by any licensee.

Theatres and Filling Stations Are Not Public Utilities—Yet

Two recent decisions that help in classifying those businesses that are "affected with public interest"

By J. T. CARPENTER

THE expression "public utility" is a purely relative term. It is no more constant in its meaning or application than the particular period in which it might be used.

The list of public utilities has been fluctuating since the signing of the Magna Charta, which first prohibited monopolies against the freedom of trade and traffic. What were looked upon as "public utilities" in by-gone days are enterprises of quite a private nature today. Surgeons, inn-keepers, and horse-shoers were among the list of businesses regulated in the past. Other types of former utilities have become obsolete—such as the old community grist mill, whose owners were required by ancient English law to grind the grain of any Englishman who demanded the service.

New inventions and new discoveries have added to the list. The discovery of gas-making and electricity were the more important steps in this direction. But aside from inventions and discoveries, new forms and means of living are creating new utilities where none existed before. The telephone, for instance, was first a toy and then a luxury and finally the rapid growth of our cities and the need of such an instrument for communication stamped it as a public necessity and, therefore, a public utility. The aeroplane has been lately added to the role and the radio threatens to be transferred at any time.

THE natural question arises as to just what is the line of distinction that separates a utility business from a private enterprise.

The courts have said that a utility is a business so "affected with public interest" as to justify regulation by the state, and if necessary, to warrant the fixing of its prices or rates. But not every business that is affected with a public interest is a public utility. Certainly the press is affected with public interest, but no court would say it was a utility; so also with the milk business and the ice business.

Text-writers have attempted at times to point to a distinguishing feature of a utility but the test has always failed in general application. It is probably safe to say that the question of just when a business is so "affected with public interest" as to justify its regulation by the state as a public utility is so delicate that each new problem must receive the acid test of judicial decision by the United

States Supreme Court before there is any legal certainty about the matter.

SOME months ago a certain state attempted to regulate the sale and distribution of theatre tickets. The purpose was to prevent the abuse of "scalping" and speculating that has placed many excellent public performances beyond the reach of the average man with the average pocket-book. Certainly this was a laudable motive, but the highest court held that the law was unconstitutional, as the stage is yet a private business.

More recently the state of Tennessee attempted to regulate the sale and distribution of gasoline. Mr. Justice Sutherland, delivering the opinion of the Supreme Court, held this also to be an unconstitutional exercise of legislative powers. The opinion states that a business or property in order to be subject to public regulation must be so employed as to warrant the conclusion that it has been devoted to the public. However, a business is not necessarily so affected merely because it is large or because the public are concerned with respect to its maintenance. He stated:

> "But we are here concerned with the character of the business, not with its size or the extent to which the commodity is used. Gasoline is one of the ordinary commodities of trade, differing, so far as the question here is affected, in no essential respect from a great variety of other articles commonly bought and sold by merchants and private dealers in this country."

Williams *v.* Standard Oil Co. P.U.R.1929A, 450.

BUT even now these very matters at issue are not settled for all eternity. The very concentration of population in our ever-increasing cities that has made—in one state—a new utility out of central electric refrigeration, a business previously private, may at some future day bring about a cultural necessity for the regulation of recreational centers such as the theatres. Nor is it inconceivable that the rapidly diminishing supply of gasoline may likewise become so connected with public interest that regulation of its sale and distribution may be a vital factor in the conservation of our national resources.

The only thing we may say as a result of these two decisions is that, just at present, the sale of theatre tickets and the business of running a filling station is no more a public function than peddling fish or vending peanuts.

The Regulation of Holding Companies

MAY holding companies that own securities of public utility corporations be themselves classified as public utilities?

If so, do they come under the jurisdiction of the State Commissions?

If not, should laws be enacted that will enable State Commissions to control them?

These are some of the important problems that will be treated in a comprehensive article in the next number of this magazine—the May 29th issue.

The Public Utilities and the Public Pulse

How the big corporation of today studies the moods, tempers, and demands of its customers, and interprets itself and adjusts its policies to them.

By EDWARD L. BERNAYS

The author of this article has been successively a newspaper man, and publicity director; during the World War he served on the U. S. Committee on Public Information in Washington; since then he has been engaged as counsel on public relations to various governments and large industrial corporations, and has written and lectured extensively on this subject.

Ask the average man in the street as to who controls a big business and he will say that the owners or the directors do.

His answer is only half right. He is omitting a very important person—himself.

In practice, big business may be controlled by a few men, but they are controlled in turn by the wishes of the public. If the few men do not know the desire of the many and win their good will, soon there will be no business to control.

How can business hear what the public has to say? How can it modify its actions to conform to the public's desires? How can it speak to the public in a language the public understands and appreciates?

The modern way is through the services of an expert in public opinion, either within or without its organization.

The first recognition of the distinct functions of the "public relations counsel" arose, perhaps, in the early years of the present century as a result of the insurance scandals coincident with the muck-raking of corporate finance in the popular magazines. The interests thus attacked suddenly realized that they were completely out of touch with the public that they were professing to serve, they realized that they required expert advice to show them how they could understand the public; how they could conform to its demands and interpret themselves to it.

Within a decade, many large corporations were employing public relations counsel under one title or another, for they had come to recognize that they depended upon public good will for their continued prosperity. They convinced the public that they were conforming to its demands as to honesty and fairness. Thus a corporation might discover that its labor policy was causing public resentment and might introduce a more enlightened policy for the sake of general good-will, and for consistency's sake.

This application of the principle of a common denominator of interest

between the object that is sold—whether it be a bar of soap, a telephone call, a cigarette or a seat in a street-car—and the public good-will, can be carried to infinite degrees.

SAMUEL Insull, one of the foremost traction magnates of the country, says:

> "It matters not how much capital you may have, how fair the rates may be, how favorable the conditions of service, if you haven't behind you a sympathetic public opinion, you are bound to fail."

The late Judge Gary, of the United States Steel Corporation, phrased the same idea in these words:

> "Once you have the good-will of the general public, you can go ahead in the work of constructive expansion. Too often many try to discount this vague and intangible element. That way lies destruction."

Public opinion is no longer inclined to be unfavorable to the large business organization. It fosters the growth of mammoth industrial enterprises. In the opinion of millions of small investors, large organizations are friendly giants and not ogres, because of the economies, mainly due to quantity production, which they have effected and can pass on to the consumer.

This result has been, to a great extent, obtained by a deliberate use of propaganda in its broadest sense. It was obtained not only by modifying the opinion of the public, as the governments modified and marshalled the opinion of their publics during the war, but often by modifying the business concern itself. A cement company may work with road commissions gratuitously to maintain testing laboratories in order to insure the best quality roads to the public. A railroad may encourage the industries on its route by an industrial service.

IT would be rash and unreasonable to take it for granted that because public opinion has come over to the side of big business, it will always remain there. Recently, Prof. W. Z. Ripley of Harvard University, one of the foremost national authorities on business organization and practice, exposed certain aspects of big business which tended to undermine public confidence in large corporations. He pointed out that the stockholders' supposed voting power is often illusory; that annual financial statements are sometimes so brief and summary that to the man in the street they are downright misleading; that the extension of the system of nonvoting shares often places the effective control of corporations and their finances in the hands of a small clique of stockholders; and that some corporations refuse to give out sufficient information to permit the public to know the true condition of the concern.

Furthermore, no matter how favorably disposed the public may be toward big business in general, the utilities are always fair game for public discontent and need to maintain good-will with the greatest care and watchfulness. These and other corporations of a semipublic character will always have to face a demand for government or municipal ownership if such attacks as those of Professor Ripley are continued and are, in the public's opinion, justified, unless conditions are changed and care

is taken to maintain the contact with the public at all points of their corporate existence.

BEFORE a public utilities organization can have intelligent relations with the public, it must have a policy. This policy must be based upon objectives that are worked out in a concrete way.

The organization has a commodity to sell to the public. It must bring to the public's attention, by every channel available, the worth of that commodity—its high standard, its low price. It must discover what the public wants, and in so far as is possible, supply that want before it becomes an audible demand. It must go further, if it is to function effectively, and anticipate what the public will want. It must not wait until the public demands improvement.

It must give, unasked, a better commodity, a better service.

The organization must do more than improve what it has to sell. Because it deals with human beings, not robots, it must let the public know how its business is conducted. It must show not only what it has to sell and that the price is a fair one, but it must let the public know every other phase of its corporate life that can be of interest to the public—that it pays good wages and maintains excellent working conditions for its employees, for instance.

AFTER the public utilities' policy is set, the mechanics of making it known to the public must be worked out. A committee of all the executives involved should be formed. This committee should meet from time to time and be known as the "public relations committee." Someone from within the organization or from without should be in official charge of the work. The latter is usually preferable, because he has a fresher view, is freer and has no preconceived ideas about the business.

The policies of the public utility must be dramatized—and must continue to be dramatized. The policies may be sound and good, but unless they are brought to the public in an interesting way, the public will not listen.

The love of heroes is deeply grounded in humanity, and when reaching the public is the objective, the best way to do it is in human terms. For example:

If an organization stands for invention, its head may offer prizes for new contrivances; if it stands for thrift, stories may be built up to show that the head is, himself, no waster.

PUBLIC opinion is no longer inclined to be unfavorable to the large business organization . . . this result has been, to a great extent, obtained by a deliberate use of propaganda in its broadest sense. It was obtained not only by modifying the opinion of the public . . . *but often by modifying the business concern itself.*"

A gas company might show that its product is safe by staging a demonstration by children. A telephone company might show that extension phones are a necessity in a large house as well as in a business office by demonstrations that show how many steps and minutes are wasted when there is only one telephone in a house.

THERE are two headings under which the work of public relations may be conducted—routine and emergency.

Under the routine work will come such matters of understanding of broad policies as may be charted in advance. The public utility may have the problem of building up a better understanding of certain difficulties. A public utility may want to increase the promptness with which its bills are paid. A public utility may want to make the public, over a period of time, aware of some of the difficulties of its mechanical situation. All these are a matter of continuous cumulative effort.

In addition to this work, there is the emergency work. Under emergencies may come the countless—and until they come—unthought-of problems. Here is an example:

The proper handling of the following would have eliminated the emergency that arose as a result of its improper handling. Emergencies come up continually as the result of the happening of fortuitous events:

$1,000,000 Lost by False Rumor on Hudson Stock

Hudson Motor Company stock fluctuated widely around noon yesterday and losses estimated at $500,000 to $1,000,000 were suffered as a result of the widespread flotation of false news regarding dividend action.

The directors met in Detroit at 12:30, New York time, to act on a dividend. Almost immediately a false report that only the regular dividend had been declared, was circulated.

"At 12:46 the Dow, Jones & Company ticker service received the report from the stock exchange firm and its publication resulted in further drop of the stock.

"Shortly after one o'clock the ticker services received official news that the dividend had been increased and a twenty per cent stock distribution authorized. They rushed the correct news out on their tickers and Hudson stock immediately jumped more than six points."

NEWSPAPER clippings are not the only things the public relations counsel seeks. They are important only in indicating the interest of the community in the work of the public utility. Every method of thought communication to the public should be considered in any public relations program of every public utility. The eye and the ear are to be considered. Objectively, exhibitions, radio, motion pictures, speeches, working with natural group cleavages of society are important methods of carrying ideas to a large public.

The public relations policy of a public utility realizes that it is reaching the public through every such channel. There is nothing too small, just as there is nothing too large to carry an idea to the public.

It is the function of the public relations man to help two partners—business and the public—to understand each other, to supplement each other, and to develop to the advantage of both parties.

Remarkable Remarks

GEORGE ROTHWELL BROWN
Columnist.

"There's something about prohibition that puts it in a class by itself, or shall we live to see the day when the Department of Justice enforces the Interstate Commerce Act by shooting a railroad president?"

RAYMOND F. TOMPKINS
Magazine writer.

"The horse car was offered as a solution of the traffic problem of the fifties."

DR. JOHN A. RYAN
Professor at Catholic University, Washington, D. C.

"The courts have held that rate-making is a legislative function. In the matter of fair rate of return, both Commissions and the courts are tending to be unnecessarily generous to public utility corporations."

Sign posted round about an electric station in Donegal, Ireland.

BEWARE!

"To touch these wires is instant death. Anyone found doing so will be prosecuted."

THOMAS A. EDISON
Inventor.

"The government never really goes into business, for it never makes ends meet. And that is the first requisite of business. It just mixes a little business with a lot of politics and no one ever gets a chance to find out what is actually going on."

B. C. FORBES
Financial expert and writer.

"Apparently the only way that some of the radical politicians can hope to get on the front pages of the newspapers is by ranting and raving against corporations, by indulging in corporation baiting and by instigating all manner of probes."

EDWARD N. HURLEY
Formerly Chairman of the Federal Trade Commission.

"The Government cannot co-operate with business unless business chooses to co-operate with the Government."

RANULPH KINGSLEY
In a letter to the New York "Times."

"Every corporation, says Wall street—and Wall street buys and sells enough corporations annually to know—runs through two stages of senility before a final débâcle. The first stage is when the corporation is managed by extremely old men. The second stage is when the corporation is managed by the young stenographers of extremely old men. The second stage—like a man's second stroke of apoplexy—is hopeless. All one can do is to send for the undertaker—who, in corporation affairs, is usually a bankruptcy lawyer. But the first stage can be cured, if taken in time—and the cure is, says Wall street, to develop a 'No-man.'"

BURTON K. WHEELER
U. S. Senator from Montana.

"I have always contended that the people should own their own papers and not leave the news to be canned by the great corporate interests of the United States."

HOWARD BRUBAKER
Author.

"Though defeated in the Supreme Court, the Interborough Rapid Transit has reposted its 7-cent fare notices. We wouldn't raise false hopes, but it looks as if the Interborough were about to secede from the Union."

CLARENCE C. DILL
U. S. Senator from Washington.

"I am considering the introduction of a bill which would prohibit the use of the mails to any papers owned by a utilities corporation. That is drastic, I know, but the time for drastic measures has arrived."

ALBERT W. WHITNEY
Associate General Manager, National Bureau of Casualty and Surety Underwriters.

"Twenty thousand children are killed in accidents each year. Fifteen thousand of these might be saved if the kind of work were done in all schools that is being done in some of the best."

T. O. KENNEDY
Public utility executive.

"The electric light and power industry has not yet entirely recovered from the effects of the drug administered more than forty years ago when we started out with a newly developed product of engineering inventiveness possessing wonderful possibilities of service to the public but with a tag around our neck labeled "Natural Monopoly" which had the same stultifying effect as has the granting of an unemployment dole to the ordinary laboring man."

HEYWOOD BROUN
Columnist.

"Save in a few states one may not bet on horses, but you may wager your head off on locomotives or automobiles through buying Baldwin or General Motors."

RAYMOND TOMPKINS
Author.

"It was a long time before the communal *mores* permitted horse-cars to run on Sunday. Occasionally a company would get a supine and sinful mayor or alderman to propose it, and a vicious newspaper to back it up, but the shocked citizens would rise up and bury the idea under a deluge of righteous wrath. But as the times grew degenerate, the Sunday laws relaxed, and the wicked companies began to roll up huge Sabbath receipts."

A classified advertisement in a Texas newspaper.

"FOUND—Lady's handbag; left in my car while parked. Owner can have same by identifying property. If she makes satisfactory explanation to my wife, I will pay for ad and give reward."

Who Will Distribute Our Water Power?

The Governor of New York invites private capital to undertake the task. And again some old questions rise as to the best method of obtaining the maximum service at the lowest cost to the consumer—and to the taxpayer.

By DAVID LAY

In his special message to the New York legislature in March, Governor Franklin D. Roosevelt outlined his views on water power development.

His opinion as to the broad principle involved agrees with that of his illustrious predecessor, Alfred E. Smith; but Governor Roosevelt is concerned about the regulation of public utilities by State Commissions and of the opinions of the Federal Courts as to the reasonableness of rates. In introducing these subjects, the Governor says:

> "In making use of this potential energy of the St. Lawrence owned by the people of the state the objective of the problem is essentially this:
> 1. The physical transforming of falling water into electrical current.
> 2. The transmission and distribution of this current from the plant where it is developed to the industries and homes of the state."

This is a very clear statement of the objective of the problem. The waters of the St. Lawrence river flowing to the sea are of not much use for electric light and power unless somebody does something about generating and delivering the kilowatts. It is the same with other natural resources.

Coal buried in the earth in Pennsylvania, for example, is of no utility to a New York man unless someone digs the coal up and brings it to him. Potential electric light and power is of about as much value to the citizens of New York as unmined coal would be. Everyone will agree, therefore, that the Governor of New York has made an accurate statement of the objective of the problem of water power development.

The mighty power which slumbers in the waters of the St. Lawrence is there, of course, for the use of the people. The only way that power can be withheld from the people is by doing nothing about developing and delivering it. No matter who does the developing or under what terms or conditions the energy is produced, the power goes into the service of the people when it passes through the consumer's meter, but not until then. Up to date it has not been private corporations, but the state itself which

has kept that power locked up in the channel of the river away from the homes and factories of the people.

After stating the objective of the problem of water power development, the Governor goes on to say:

> "As this St. Lawrence power source is the property of the people of the state, we can, I think, all agree to the principle that the actual energy therefrom, should for all times, be under the immediate control of the people of the state and should be transmitted and distributed to the people of the state at the lowest possible cost."

ONE would have to search far and wide to find any large group of men or women who would not agree that electricity should be generated and distributed to the people at the lowest possible cost. Every consumer, certainly, would say amen to that; and since consumers greatly outnumber stockholders, the overwhelming opinion—if not the unanimous opinion—would be in favor of having current generated and distributed at the lowest possible cost.

And if the consumers could be sure they would always get their light and power at the lowest possible cost, it would not make the slightest difference to them who owned the water power site, who generated the electricity, or who distributed it.

All that can be added to that statement is that it should be received at the lowest possible cost consistent with the best and most dependable service.

IT is not quite certain what Governor Roosevelt means by the statement that all will agree that energy coming from water power owned by the state should be under the immediate control of the people of the state.

If he means state retention of title to water power sites, state development of the power and private distribution under contractual terms fixed by the state; and if capital cannot be obtained on such terms, then distribution as well as production by the state,—not all students of the problem will agree with him. The people agree that they should receive electric service at the lowest cost but they do not agree as to the best method of achieving that happy result. We shall not have agreement on that subject for a long time.

GOVERNOR Roosevelt does not make the mistake that some do, of considering ownership and development of water powers by the state as the only means of preserving those powers for the use of the people. He deals with the matter from the standpoint of reasonableness of rates to the consumer, but he says:

> "We are confronted with what many believe to be the ineffectiveness of the present rate regulating powers of the Public Service Commissions."

Many persons undoubtedly do believe that; they are not necessarily right. Criticism of the Commissions has come largely from disappointed litigants, from persons who do not know much about the work of the Commissions, and from advocates of government ownership. Some criticism there has been from people who are familiar with Commission activities, yet it has not been very serious. When it has resulted in investigations by legislatures, the Commissions have come out with flying colors.

Governor Roosevelt Puts the Proposition Up to Business Men Thus:

"My plan is to have the state own the power sites and develop the power; but you can distribute it for a fair return on capital invested. The return on the cash invested should not exceed interest actually paid on borrowed money and dividend rates not in excess of current rates on preferred stock, and not to exceed 8 per cent on all other cash capital.

"You can take this or leave it. We will give you your chance. If you don't want it, the state may have to distribute as well as develop the power."

Let us see what the Governor says about Commission regulation:

> "When the Commission was first created, about twenty-five years ago, the basic purpose was to provide fair rates based on fair return to private capital."

That is correct. The purpose stated was and still is the basic principle of regulation. The Governor then says:

> "It was recognized then that private capital entering the public utility field would be distinguished from private capital entering wholly private fields of industry, in that the profits to a public utility company would be limited and sums carried over and above a fair return would be passed back to the consumer in the form of lower rates."

That is also correct. Nobody familiar with regulatory policies would dispute it. That principle has been applied in thousands of cases and has resulted in the saving of millions of dollars to ratepayers, both by the New York Commissions and other Commissions throughout the country. The Governor continues:

> "Since that time a series of court decisions, especially the Federal Courts, have to a large extent nullified the protection originally intended for the consumer. Originally it was intended that fair earnings should be limited to actual cash capital invested, but today it is notorious that because of court rulings involving replacement value, 'going value,' so-called good will, return on capital, and allowance for surplus, have made legally possible investment returns as high as 50 per cent and even 100 per cent annually on the original investment."

Here the Governor lets the cat or cats out of the bag; and we find before us our old acquaintances "PRUDENT INVESTMENT" and the "COURTS." We now see the reasons for his reference to the ineffectiveness of Commission regulation of utilities.

A brief retrospect will be enlightening.

Long before the passage of the New York Public Service Commission Law in 1907, William J. Bryan, a member of the Governor's own party, had argued in the Supreme Court in favor, not of the prudent investment

theory, but of the value theory; that is to say, the theory that earnings should be based upon the fair value of the company's property. He made that argument on behalf of ratepayers in the interest of lower rates. Mr. Bryan said:

> "In endeavoring to establish a reasonable rule, we are bound to consider the conditions, which surround other occupations. Railroads are built, owned, and operated by corporations; corporations are fictitious persons created by law; laws are made by the people through their representatives. It cannot be assumed that natural persons would intentionally create fictitious persons and endow them with rights and privileges greater than they themselves enjoy. Neither can it be assumed that the natural persons who make the laws desire to exempt corporations, the creatures of the law, from the vicissitudes which surround themselves. The ordinary business man cannot avail himself of watered stock or fictitious capitalization nor can he protect himself from falling prices. If his property rises in value, he profits thereby; so do the owners of a railroad under similar conditions. If his property falls in value he loses thereby; so must the owners of a railroad under similar conditions unless it can be shown that railroad property deserves more protection than other forms of property."

THE Supreme Court decided in favor of the value theory and mentioned certain factors to be considered in determining fair value. The decisions in favor of the value theory did not spring up after the creation of the New York Commissions. No decision of the Supreme Court prior to 1907 or since can be found to the effect that fair earnings should be limited to the capital invested. There was considerable controversy at that time as to what constituted fair value, but no one can say that the courts held that fair earnings should be limited to the cash capital invested. The rule that earnings should be based upon the fair value of the company was well established in 1907, although the weight to be given various factors in arriving at that value was not well settled.

The New York Public Service Commission Law, passed in 1907, was silent on the subject of the factors to be considered in determining the reasonableness of rates; but the legislature must be presumed to have known what the law as to reasonableness of rates was when it enacted that statute creating the first Commission. If it had thought it had any power to limit earnings to the cash capital invested, and intended to do so it could easily have said so. In the absence of any declaration on the subject it must be presumed that the legislature intended that the Commissions would follow the rule laid down by the Supreme Court.

IN 1910 the law was re-enacted, and for the first time there is an express declaration of the legislature on the subject. Section 49 which deals with railroad rates requires the Commissions to consider value, in the following language:

> "Commissions shall give due regard among other things to a reasonable average return upon the value of the property actually used in the public service and to the necessity of making reservation out of income for surplus and contingencies."

This language has remained unchanged to this day. Section 97 of

the 1910 Law required the Commission in fixing telegraph and telephone rates to

> "give due regard among other things to a reasonable average return upon the value of the property actually used in the public service and of the necessity of making reservation out of income for surplus and contingencies."

This language adopted in 1910 remains the same, in the present law. Section 72, however, which governs gas and electric rates, contains different language. It has this provision:

> "In determining the price to be charged for gas or electricity the Commission may consider all facts . . . with due regard, among other things, to a reasonable average return upon capital actually expended, and to the necessity of making reservation out of income for surplus and contingencies."

This language also remains unchanged. But even here, actual investment is mentioned as only one of the facts to be taken into consideration in fixing the rates. In no part of the law has there ever been a declaration that earnings shall be limited to a reasonable return upon the actual cash investment.

THE truth of the matter is that in 1907 the people had a very nebulous idea about what constituted reasonableness of rates. There was a good deal of talk in those days about watered stock and extortionate charges. The people probably thought if the return were on the fair value, then the established rule, the water would be squeezed out and the rates lowered. The rates were lowered; but not as much as ratepayers probably hoped they might be at that time.

The cash investment theory probably had many advocates even then but the people in creating the New York Commissions did not expect them to limit the return to the actual cash investment. The legislature did not say so. It said something else. The law as enacted must be taken as the best evidence of the wishes of the people.

FINALLY, the Governor makes this declaration to the business men:

> "My plan is to have the state own the power sites and develop the power; but you can distribute it for a fair return on capital invested. The return on the cash invested should not exceed interest actually paid on borrowed money and dividend rates not in excess of current rates on preferred stock, and not to exceed 8 per cent on all other cash capital. You can take this or leave it. We will give you your chance. If you don't want it the state may have to distribute as well as develop the power."

Again he says:

> "I want to see something done. I want it done in accordance with sound policy. I want hydroelectric power developed on the St. Lawrence, but I want the consumers to get the benefit of it when it is developed. They must not be left for their sole protection to existing methods of rate making by Public Service Commissions. Are the business men of this state willing to transmit and distribute this latent water power on a fair return on their investment? If they are satisfied, here is their opportunity. If not, then the state may have to go into the transmission business itself. It can not on the one hand let this power go to waste, nor on the other be required to yield to any one who would aim to exploit the state's resources for inordinate profit."

WHILE the question of who can handle the hydroelectric job to the best advantage of those who want the service is debatable, no one can say that Governor Roosevelt's proposition to the business men is not fair. He names the terms. Capital is not yet invested. It is free to accept the proposition or reject it. If the man with the money to invest believes the terms attractive, he will put up the cash; otherwise he will keep it in his pocket or will invest it elsewhere.

It is the lender and not the borrower who has the final determination of the question of the reasonableness of the return. Neither Governor Roosevelt, the Commissions, nor the courts can settle that question. Capital cannot be commandeered for public utility enterprises. It goes into the most attractive field and the man who has the money decides the question of attractiveness. Governor Roosevelt would make a definite proposition to the business men of the state. It may or may not be a wise proposition from the standpoint of the people who need the power; but it is fair to the investor as he does not have to accept it if he does not like it.

IN the meantime while we are debating this hydroelectric question steam power looms on the horizon as a powerful competitor in the matter of the cost of production. It may turn out that the utilization of our water power for the generation of electricity may become as uneconomical in the future as the utilization of the canals now is for the carriage of freight. The whole problem needs further study. Opinions as to this solution will differ.

All About Electricity—at a Glance

"ELECTRICITY is something that starts the Lord knows where and ends in the same place. It is 1/86 of a second faster on its feet than its nearest competitor, backyard gossip, and when turned loose in Europe will get to the United States five hours before it starts. Nobody knows exactly what it is because it has never stood still long enough.

"Electricity is sometimes known as science gone crazy with the heat, and if you can understand its maneuvers you can do anything with it except open a can of peanut butter at a picnic.

"Electricity was locked up in ignorance for centuries until Ben Franklin let it out with a pass key, and since then it has been pulling off more new stunts than a pet monkey.

"With it you can start a conversation or stop one permanently, cook dinner, curl your hair, press your trousers, blow up a battleship, run an automobile or signal Mars, and many more things are being invented."

—ANON.

The Establishment of Credit by Utility Patrons

THERE has been considerable controversy of late over the policy of some utilities in requiring deposits from customers to secure payment of bills. It seems fair enough that companies should be protected from irresponsible patrons who depart without a forwarding address, but on the other hand, old and honored customers who have been paying promptly for years are probably equally justified in feeling some resentment against a suddenly compelled deposit requirement. They feel as if their personal honesty were questioned for the first time in years. So the question of deciding just who is and who isn't a trusted customer is a mightly delicate one.

As long as public service companies have to apply their own methods to this situation, misunderstandings will continue and public relations will be strained. This is a burden on the companies who do not welcome the disagreeable task of separating the sheep from the goats and it is also a burden on the customers who are forced to pay the bill of vanishing "beats" if credit enforcement is lax and who are kept in a constant state of agitation and very often litigation when such companies attempt strict credit enforcement.

The very best thing that could happen for all concerned would be the establishment of set rules by the various Commissions governing just when a customer might be considered as having established his credit. When that is done and all customers have notice of it, companies will no longer be blamed for trying to find their own way out of the difficulty.

The New Jersey Board of Public Utility Commissioners has just laid down such a rule and it seems to be substantially the same as that adopted by certain other Commissions and companies. The Board held that a customer's credit will be considered as established, (1) if he owns a considerable equity in the premises to which service is to be supplied, (2) or furnishes a guarantor for payment of his bills satisfactory to the utility, (3) or has paid all his bills to the utility promptly during a period of two years or more.

The Board was of the opinion that a company is not justified in requiring a deposit from any customer who complies with either or all of these requirements unless it is prepared to furnish affirmative proof that the credit of such an individual has become impaired.

In other words the distinction was officially drawn between the customers who had proven their responsibility and those who had not yet earned their place on the honor roll. This gives the company freedom of action, and what is more important freedom from blame; it gives to the customers the benefit of uniform and equitable credit requirement and protects the general class of ratepayers from the depredations of the fly-by-night consumers.

What Others Think

The Economics of Water Power Development

THE three important sources of power are coal, petroleum, and water power. The development of industry in the South, where water-power resources are abundant; the dangerous consumption of petroleum resources, which, it is estimated, will be exhausted in two or three decades; the relation of flood control to water power,—all of these factors intensify public interest today in the future development of water power. Added to this is the feeling that water power is in a sense public property, and that this resource must be protected so as to prevent exploitation by private capital of the great unearned increment which will accompany future development.

Professor Walter H. Voskuil in his recent book, "The Economics of Water Power Development" has made a careful and comprehensive study of the potential water-power resources in the United States. He has presented a picture of the water-power resources in each section of the country with an analysis of the peculiar economic conditions which surround the utilization of hydraulic resources. Since water power cannot economically be transported, even by electric current, for more than 200 or 300 miles, the value of the resources of a region depends upon the condition of the market and the extent of industrial development in the adjacent territory, besides the other factors. Each analysis of the different water-power regions of the United States presents suggestions for future development which are worthy of consideration by those who will shape the policies for development of these resources in the future. This study is, however, more concerned with the problems of future development, than with matters of regulation of the enterprises responsible for future power undertakings.

As a study, Professor Voskuil's book impresses one by its imposing array of facts. The material upon which he bases his conclusions are scientific and authoritative reports of the following nature: Reports of the Federal Power Commission, the Transactions of the World Power Conference of 1924, the United States Geological Survey, reports of State Commissions, publications of technical societies, such as the American Society of Civil Engineers, and private reports. The conclusions reached by Professor Voskuil are briefly summarized as follows:

The United States is divided into five major waterpower sections:

1. The St. Lawrence Valley including the drainage below Lake Erie, and the large tributaries of the St. Lawrence river in the provinces of Ontario and Quebec.
2. The Piedmont section of the Carolinas and Georgia and the Tennessee drainage basin above Muscle Shoals in Alabama and Tennessee.
3. The Colorado river.
4. The water power of the Valley of California, and of the western slope of the Sierra Nevada Mountains.
5. The water power of the Pacific Northwest, the Columbia river area and Alaska.

The economic discussion of each of these regions is prefaced by a description of the physiographic and hydrographic features. The economic discussion includes in each case an analysis of power possibilities; potential power demands the industrial development and future of each area, and the relation of industrial uses to domestic uses and flood control.

Problems of regulation by public authority are not in each case considered, and only as incidental to the actual future development. The reader may feel from the few discussions of this phase of the subject that Professor Voskuil favors private ownership and development with public regulation wherever possible. He observes that in the exploitation of our forests, coal lands, petroleum, and soil practically no public control was exercised. The present public interest in water power represents a change in public opinion toward a closer supervision of the disposition of the natural resources of the country.

In the Southeastern states, particularly in Eastern Tennessee and Northern Alabama the industrialization from 1921 to 1927 and the promise of the future development support the belief that ultimately all of the available power in the Tennessee river and its tributaries will be used.

> "In view of this fact public economy dictates that the continued survey of the river system be provided for by ample funds, and that a comprehensive plan be laid down in anticipation of needed power." (Page 87.)

THE Colorado river problem is made complex by international issues, and by the inter-relation of flood control, irrigation, domestic water supply, and water power. To effectively adjust all of these conflicting interests the plan for developing the Colorado river must consider the whole river. The two outstanding plans existing today are the Boulder Dam project and the project of E. C. La Rue presented in the United States Geological Survey of 1925.

Professor Voskuil finds the chief defect of the Boulder Dam plan to be a large waste from water evaporation. He favors the La Rue plan because it provides the most effective means of flood control and storage for irrigation, and provides a maximum use of water for both irrigation and power. The Colorado river region is so close to the California supply that there is some danger of insufficient demand for water-power development in both of these regions.

> "The disposal of power is not merely a question of supplying an expanding market. This could no doubt be supplied for the near future by the California water powers. There must be an agreement that these latter water powers will not be developed until developments on the Colorado river are first absorbed." (Page 107.)

As for the development of the Colorado river:

> "The interstate character of the stream and the physical necessity of constructing plants of large installed capacity—larger than any erected thus far—may in itself mean that the development must be undertaken by the Federal Government." (Page 107.)

The problem of the Pacific drainage is one of market demand rather than supply.

> "The potential power sites of the Pacific Coast constitute about 40 per cent of the total potential resources of the entire United States. The power demand in the Western States, however, does not call for the development of all these resources, or even a major portion of them." (Page 111.)

IN his discussion of public ownership and public control, Professor Voskuil discusses, "The Giant Power Plan" of former Governor Gifford Pinchot, and the Muscle Shoals project. Public control of water power in this country has not progressed very far to date. The Federal Power Commission is destined to play an increasingly important role. The chief defects of the Federal Power Act today are that the Commission has no full time personnel except the executive secretary and the engineer officer. The Commission is forced to borrow men from the staffs of other departments such as Agriculture, War, and the Interior. The second defect is the failure to provide the Commissions with administrative authority over water-power grants issued under prior laws. The third defect is failure to allot the monies received from license fees for survey work concerning the waterpower resources of the United

States, and there is a growing need for surveys of this kind.

"The meager information now available regarding the capacity, cost of development, and the market possibilities of the great number of power sites makes it imperative that the Federal Power Commission should undertake investigations along these lines and gather data concerning individual sites as well as for the entire watersheds. What is needed is a comprehensive survey of the water resources of the streams of the United States in order to enable the Federal Power Commission to pass intelligently upon the many applications for power projects that are constantly being filed, and to have information which will enable it to determine whether the projects for which it grants licenses conform to an economic plan of river development for purposes of irrigation, flood control, and power." (Page 154.)

—MARION J. HARRON

THE ECONOMICS OF WATER POWER DEVELOPMENT. By Prof. Walter H. Voskuil, Assistant Professor of Industry of the Wharton School of Finance and Commerce, University of Pennsylvania. 8vo. Chicago; A. W. Shaw Co. 226 pages. 1928. $3.00.

Bibliography

Furnished by Herbert B. Dorau, Institute for Research in Land Economics and Public Utilities, Northwestern University

ELECTRICITY: INDEX OF NATIONAL PROSPERITY. By W. M. Carpenter. *N. E. L. A. Bulletin;* No. 16; pp. 133–136. 1929. An analysis of production figures as indicative of general business conditions. Due to the general increase in the use of electricity in all sorts of business as well as in the home, production figures in this field appear to indicate the general level of prosperity better than any other index.

USE OF WATER ON FEDERAL IRRIGATION PROJECTS. By E. B. Debler. *American Society of Civil Engineering Proceedings;* No. 55; pp. 751–783. 1929.

EMPLOYEE TRAINING. By F. M. Dee. *Gas Age Record;* No. 63; pp. 385–387. 1929. Methods and results of conducting an employee training program.

HOMECOMING FOR KILOWATT HOURS: POSSIBILITIES OF ELECTRIC POWER UTILIZATION BY DOMESTIC CONSUMERS. By H. T. East. *Power Plant Engineering;* No. 33; pp. 252–254. 1929. Expanding the domestic market—possibilities and methods.

NATIONAL WATER POWER. By G. E. Edgerton. *Electrical World;* No. 93; pp. 487–491. 1929. Administering the Federal Water Power Act of 1920.

INDUCEMENT RATES. By S. Ferguson. *Electrical World;* No. 93; pp. 435–437. 1929. The importance of maintaining a minimum charge to cover overheads in order to enable company to maintain a low energy rate to encourage the fuller use of the service. Economics of the minimum charge.

WHAT IS DEPRECIATION? By H. E. Hale. *Railway Age;* No. 86; pp. 403–406. 1929. Not to be confused with accounting reserves.

THE COST OF RAILROAD EQUIPMENT. By H. E. Hale. *Railway Age;* No. 86; pp. 608–612. 1929. Methods, results, and practices followed in evaluating equipment.

THE COMMERCIAL MOTOR VEHICLE AND THE PUBLIC. By M. H. Hunter. *American Economic Review Supplement;* No. 19; pp. 236–245. 1929. The problem of taxing the motor vehicle and relating it to the general public interest in transportation.

PLANNING UTILITY GROWTH. By T. O. Kennedy. *Electrical World;* No. 93; pp. 581–584. 1929. Budget making and method of planning for a 10-year growth.

CARRIER PROPERTY CONSUMED IN OPERATION AND THE REGULATION OF PROFITS. By G. O. May. *Quarterly Journal of Economics;* No. 43; pp. 193–220. 1929. A discussion of the I. C. C. report on depreciation.

AN INDUCTIVE STUDY OF PUBLICLY OWNED AND OPERATED VS. PRIVATELY OWNED BUT REGULATED ELECTRIC UTILITIES. By H. W. Peck. *American Economic Review Supplement;* No. 19; pp. 197–218. 1929. A comparison between the publicly owned and operated Ontario system and the privately owned and operated systems in New York state concluding that public operation is cheaper.

SOURCES OF STATISTICS FOR THE ELECTRICAL INDUSTRY. *Special Lib.;* No. 20; pp. 52, 53. February, 1929. Summary outline of sources.

WHO PAYS FOR THE HIGHWAYS? *Bus Transportation;* No. 8; pp. 140, 141. 1929. Showing the proportion of revenue derived from all sources and steam railway contribution.

OUT OF THE MAIL BAG

The Recent Changes in the Status of the District of Columbia Commission

IN PUBLIC UTILITIES FORTNIGHTLY of March 7, 1929, there is an article entitled "WANTED—A Full-Powered Public Service Commission," wherein the author states that "until two years ago the District of Columbia had no effective, working Public Utilities Commission." You also refer to this Commission as, "the present Public Service Commission" and say that it was "organized about two years ago."

This Commission is known as the "Public Utilities Commission" and not "Public Service Commission," and was created by an act of Congress signed by Ex-President Taft on March 4, 1913. Since that time this Commission has complied with the letter of the law in making valuations of all of the utilities' properties during the years 1914, 1915, and 1916, commencing this work less than one year after the Commission was created. Valuation work was done under the supervision of Dr. Edward Bemis, employing as his chief accountant Mr. Andrew Sangster, a chartered accountant in England and a certified public accountant in the United States. The engineering work was under the direct supervision of Mr. Charles Pillsbury. This work was done at a total cost of approximately $160,000.

For seven years, the case of the Potomac Electric Power Company was in litigation and was finally decided as of December 31, 1924 on a compromise basis, the Commission directing that the said company refund to consumers an amount just under $3,000,000. All of these refunds were made with the exception of about $180,000, and the reason that this could not be refunded to people subscribing for this company's service during the period of litigation was because Washington was populated with a large percentage of transients during the war period.

The valuation of the properties of the Capital Traction Company has been adjudicated, the Court finding a somewhat higher valuation than that found by the Commission. The cases of the Washington Railway Electric Company and the Washington and Georgetown Gas Light Companies are still before the courts. The valuation of the Chesapeake Potomac Telephone Company is satisfactorily settled through an agreement between the company and the Commission, this agreement being really made necessary because of the destruction of all records of this company in the Baltimore fire.

The Commission has now finished the second valuation of the properties of the two local gas companies, the valuation being made at the request of the companies. This case is also suspended pending court action.

—E. V. FISHER.
Executive Secretary, Public Utilities Commission of the District of Columbia.

NOTE: Our statement was that the *present* Commission was *organized* about two years ago. While a Commission has existed in the District of Columbia since 1913, an act was passed in December, 1926, amending paragraph 97 of § 8 of the law creating the District Commission, and changing the organization and personnel. We are satisfied that Commission regulation in the District of Columbia has not been open to criticism.

—EDITOR.

Some Problems in Computing The "Costs" of Electric Power

THE article in the March 21st number on "The Right to Sell Public Utility Service Below Cost" is very interesting. I do not disagree with the author's arguments and conclusions, but I think there are additional points involved which have not come out in any discussion which I have seen. This is of the greatest importance to utilities in Massachusetts, and elsewhere, because of the inclination of the Massachusetts Commission to make cost allocations on a very casual basis, assigning most of the investment and operating expenses in proportion to the kilowatt hours used, and then reducing the lighting rates because the allocation so made is supposed to show that the lighting business is yielding more than a reasonable return. The necessary corollary is that the company can either raise its power rates or give up the power business—and benefit in either case.

It is obviously improper for either a municipal or a privately owned plant to sell service below cost, but knowledge must be had and judgment exercised in ascertaining the cost. Mr. Kirkpatrick senses that the

procedure proposed by the Commission would result in figures higher than the true cost of industrial power, and that the plant would be worse off if it lost that business and the revenue derived from it; but he does not seem to appreciate where the error is, and I do not blame the author for taking exception to the arguments which he advances. Of course interest and depreciation are as much a portion of costs as the coal which goes under the boilers, and it is silly to say that they should be left out in order to justify selling at a particular price. But this is not the real trouble.

The first important point to be brought out is that kilowatt hours can not be used as the sole basis for allocating costs. By that method the poor load factor load is not penalized and the good load factor load does not receive proper credit. It certainly costs more per kilowatt hour to turn out energy for short-hour lighting customers than for long-hour power customers. In allocating costs, the demand element must receive adequate consideration. Some of the operating expenses, most of the maintenance expenses, and all of the interest, depreciation, taxes, insurance, and similar costs are dependent upon the maximum load rather than on the kilowatt hours.

The error in the Massachusetts Commission's proposed method is not in the ingredients which have been put into the pot but in the relative proportions of the stew which are being served to the different classes. When on a *pro rata* basis—that is, giving no special consideration to any class but treating each impartially but in accordance with its characteristics of use—the cost of power for the large, long hour industrial users probably figures less than Mr. Kirkpatrick is charging.

The second point is, that highly competitive business like large power customers, cannot be treated on a *pro rata* basis, but must be considered on an increment basis.

Of course the plant should get as much money from these customers as it can; but the lowest limit to which it can afford to go in fixing a price is not the *pro rata* allocation of costs, but the amount by which all costs (including interest and depreciation) are increased by reason of such business. Anything which can be obtained above the increment costs (figured honestly, intelligently, accurately, and completely) is a net gain, and benefits to that extent the business as a whole, and, therefore, the other classes served.

It is very easy to take the total cost of maintenance and operation, including interest and depreciation, divide it by the number of kilowatt hours, and say that the quotient represents the cost per kilowatt hour; but it is not true, either theoretically or practically, and with respect to this large power business it is not true for both of the reasons which I have just outlined.

In writing this I have no thought of criticism. It was perfectly natural for the author to reach the conclusions which he did. I happen to have had an intimate knowledge of certain phases of public utility regulation in Massachusetts during the past two or three years, and this permits me to see certain aspects of the problem which do not appear on the surface.

EDWARD J. CHENEY,
Engineer, New York City.

No "Breakdown" in Arizona

I HAVE carefully read the article "The 'Breakdown' of the Public Service Commissions," including the editorial comment of the editor of the *World*, New York. It is just too bad that the high hopes possessed by that editor some twenty-five years ago have not been fully realized; but why should he apply his acknowledgment of the "breakdown" of the New York Commissions to Commissions of all the other states? I believe if he would just get away from his present environment and come out to Arizona for a few months, his physical as well as his mental condition would be considerably benefited. And I believe, further, that his expressed concern for the breakdown of the State Commissions is not the question that prompted this editorial; I would appreciate a statement of the real facts that are causing this editor's great concern.

"All Commissions are pawns in the hands of big business, which looks upon the play of the contending forces before the Commission as so much hot air," states Henry W. Beer, President of the Federal Bar Association. I will have to admit my ignorance of the Federal Bar Association—of what it is, where it is or why it is.

I am personally acquainted, however, with a great many Commissioners of the different states and with their method of procedure. There must be a finding of facts and conclusions must be reached before an order is issued; that rule is applied by State Commissions in most instances. Perhaps Mr. Beer has attended sessions of some of our national law-making departments of the government where expediency prevails instead of fact, and has confused these with the State Commissions. Perhaps he will admit that big business may have a few pawns in Congress and in various state legislatures. In fact, I believe that Mr. Beer would like to do away with the jurisdiction vested in the different State Commissions and place it somewhere in the environs of said Mr. Henry W. Beer, President of the Federal Bar Association.

W. D. CLAYPOOL,
Chairman, Corporation Commission,
Phoenix, Arizona.

The March of Events

Alabama

Discontinuance of Interstate Trains Without Commission Consent

ARGUMENTS were heard before the United States Supreme Court on April 24th and 25th in the case of St. Louis-San Francisco Railway Company v. Alabama Public Service Commission, involving the constitutionality of an Alabama statute purporting to give the Commission the power to impose penalties upon railroads which discontinue interstate trains, serving part of the state, without Commission approval.

Counsel for the railroad argued that such attempted regulation was in violation of the interstate commerce clause as a direct interference with interstate operations. Counsel for the Commission contended that the supreme court should not entertain a bill for injunction until the complainant had exhausted its remedies with the Commission, and further that the state in the exercise of its police power might require railroads to provide reasonable, adequate, and suitable facilities for the convenience of the communities served by them, although such regulation of carriers might incidentally affect interstate commerce.

California

Gas Control Bill

A BILL sponsored by the local conservation committee of the American Petroleum Institute and the State Board of Conservation, appointed by the Governor of California two years ago, providing for curtailment of natural gas waste has been up before the state legislature. The measure will, it is believed, automatically supersede the present agreement among operators for limiting oil output, though agreements are said to be encouraged under its terms.

While the bill is primarily styled as a gas conservation measure, the *Wall Street Journal* remarks that it is quite obvious that making it illegal for "blowing, release, or escape of natural gas into the air," will automatically curtail oil production, as without means for taking care of natural gas, operators will be unable to complete oil wells indiscriminately.

Phone Investigation Resolution Defeated

THE California legislature has failed to adopt the Quigley resolution asking for a Congressional investigation of the telephone industry. The resolution grew out of a move launched in Congress by Senator Hiram W. Johnson at the last session. Opponents of the resolution declared that the Johnson proposal had died at the last session of Congress and that the assembly was being asked to "make a fool of itself."

Connecticut

Hearing on Electric Rates

A HEARING on a petition for lower electric rates in Winsted was held on April 18th by the Commission. Counsel for the petitioners quoted rates and methods of making them in Ohio and Georgia and claimed that there should be a lower rate in Winsted.

President Frank Travis of the Winsted Gas Company, it is reported in the Hartford *Courant*, said that he thought that the medium and large residential rates should be changed, and that the power rate was too low.

The company introduced figures and graphs showing that the current furnished to Winsted factories varied considerably, owing to

the fact that most of the factories have water wheels, which furnish electricity when there is enough water and use company current only during the dry season. An informal meeting of the Commission was scheduled for May 16th.

District of Columbia

Chairman Childress Resigns

PRESIDENT Hoover on April 27th accepted the resignation of Chairman John W. Childress as a member of the Public Utilities Commission, to become effective May 31st. In accepting the resolution, President Hoover said:

"I have received your letter of April 26th conveying your resignation as a member of the Public Utilities Commission. In accepting it I wish to express my appreciation for the devotion and fine service you have given in the public interest."

Mr. Childress resigned, it is stated in the Washington *Star*, to accept a position with the newly created United States Lines, Inc. of which he would be the corporation's general agent for the District of Columbia, Maryland, and Virginia.

The resignation of Chairman Childress creates two vacancies on the Commission, one of which must be filled before May 31st lest the Commission be unable to function legally with its remaining member, Col. William B. Ladue, engineering commissioner of the District. The other vacancy was caused by the failure of the Senate to confirm former President Coolidge's nomination of Col. Harrison Brand, Jr.

Court Attack on Deposits

THE recent order of the Commission permitting utilities to require deposits for gas, telephone, and electric service was attacked in the District supreme court on April 22nd by the Washington Consumers' Guild and E. C. Riegel, director of the Guild.

Complaint is made against the refusal of the Chesapeake & Potomac Telephone Company to install telephone service for the Washington Consumers' Guild, Incorporated, because of its refusal to post a cash deposit; against the discontinuance of service by the Washington Gas Light Company to Mr. Riegel because of his refusal to post a cash deposit; and also because of the discontinuance by the Potomac Electric Power Company of service to Mr. Riegel because of his failure to make a deposit.

The complainants demand that the order be set aside and that the utility companies be directed to discontinue the practice of demanding deposits and to refund to depositors as quickly as possible sums now held by the corporations on deposit, together with 6 per cent interest from date of deposit, and to impound such sums as may be unreturnable after a date to be determined by the court, subject to the disposition of Congress.

Service Charge by Apartment House Owners

COMPLAINTS have recently been referred to people's counsel Ralph B. Fleharty by Earl V. Fisher, executive secretary of the Public Utilities Commission, based on allegations that apartment house owners, in many cases, have increased their telephone service charges from 50 cents to $1 a month.

The service charge made by apartment owners is in addition to the regular charge fixed for telephone calls by the Commission, and it is thought that it may come within the scope of the Commission order of February 18th, prohibiting submetering of electric current.

Electric Rate to be Reduced

INCREASED earnings of the Potomac Electric Power Company during the first three months of this year, District officials say, will make a reduction in electric rates practically mandatory.

The rebate to the company of cancelled taxes on poles, lines, and conduits, amounting to approximately $800,000, is an important factor. The present rate is 5.2 cents per kilowatt hour and it has been suggested that the rate may be reduced to 4.8 cents, or even lower.

Florida

Gas Rate Reduction Held Up

THE reduction in gas rates announced by the city commission of West Palm Beach was temporarily restrained on April 20th by Judge Halstead L. Ritter of the United States District Court. The Florida Public Utilities Company had appealed to the court alleging that a revision of rates would jeopardize its interests and finally result in a sale of the properties to the city.

The company in its petition alleged that it had property in West Palm Beach valued at $946,000 and that the average monthly gas bill rendered to its 3,500 consumers was less than $6.50. It was alleged that confiscation would result from a reduction in gas rates from $2.50 per 1000 cubic feet to $2 per thousand for the first 10,000 cubic feet per month, and in excess of 10,000 cubic feet, $1.80 per 1,000 cubic feet in accordance with the ordinance provisions.

Illinois

Telephone Rate Dispute

FEDERAL Judge James H. Wilkerson has been holding a series of hearings on the rate dispute between the Illinois Bell Telephone Company and the Commission, with the city of Chicago as an intervening party. The company has been objecting to rates fixed by the Commission, claiming confiscation. A temporary injunction was issued permitting the company to continue using higher rates than those found by the Commission to be fair. The city asks that the injunction be dissolved.

One of the points at issue is the right of the company to an 8 per cent return when the stock is owned by a holding company which makes other profits through the utility. Attorney William D. Bangs, on behalf of the telephone company, maintains that the court has jurisdiction only over the affairs of the local company. He asks a decision based on the cost of reproducing the properties of the Chicago company, the rate to be consistent with an 8 per cent return.

The city contends that the Chicago company has been paying excessive amounts to its parent company; that the American Telephone & Telegraph Company received other benefits than dividends on stock from the local company; that the local company buys its equipment from the Western Electric Company without being able to decide whether the equipment is necessary and the price reasonable; and that all previous rate questions were decided by the courts on the basis of stock ownership alone, but because the Chicago company has been reduced to a department of the larger system, the earnings of the larger system instead of the smaller should govern.

There are also differences between the parties in regard to total value, going value, depreciation funds, and working capital.

Indiana

Cambridge City Phone Rates

THE petition of the Cambridge City Telephone Company to reestablish toll rates between its exchanges was taken under advisement by the Commission on April 11th following a hearing. The company operates a number of exchanges in the vicinity of Cambridge City and it now seeks reversal of a recent order which required it to provide free toll service between its exchanges located not farther than ten miles apart.

Electric Rates for Power and Heating

THE town of Walkerton has filed a petition with the Commission asking for a power and heating electric rate. The town is buying its current from the Northern Indiana Public Service Company under a contract signed in 1913 to run for twenty years. The town pays 5 cents per kilowatt hour for its illuminating current and 4 cents per kilowatt hour for power to operate the town motors and the water works.

Recent developments in the field of electric appliances, it is stated in the Walkerton *Independent*, now make it necessary that there be a cheaper rate for electric current

for such use. A rate of 3 cents to 3½ cents per kilowatt hour is declared to be necessary if one is to operate an electric stove economically.

Protest Against City's Rates

A FORMAL protest against the rates and service of the municipal water and electric light plant at Rushville, it is reported in the Indianapolis *News*, was filed on April 23rd with the Commission by approximately twenty citizens and firms.

Practices of the plant, it was alleged in the complaint, are unreasonable and discriminatory and tend to force industries out of the city. It was asserted that a branch of a glove making concern had threatened to move out of town because of the high rates on electric power and lighting prevailing in the community.

Kansas

Offer of Cheaper Gas

THE Wichison Gas Company, it is reported in the Wichita *Beacon*, on April 15th made a direct proposal to furnish gas to domestic users in Wichita at a rate approximately 20 per cent lower than that now charged by the Wichita Gas Company. The gas would be furnished to all homes in the area of the company's lines, which now furnish industrial gas to the city's larger industrial concerns and business places.

While those close to the administration, says the *Beacon*, expected early passage of the proposal, it would probably be some time before the gas would be served at the lower rate. Injunctions, law suits, and other legal red tape, it was said, would have to be cut, which would probably cause the matter to hang fire for several months.

Louisiana

Compromise of Rates

ANNOUNCEMENT has been made that a compromise which will decrease the electric light and power bills of Shreveport residents to the extent of $139,057.14 annually was effected at an informal conference before Commissioner Harvey G. Fields between city officials and officials of the Southwestern Gas and Electric Company. This followed an investigation and rate contest which had lasted more than two years.

Some time ago the city started suit demanding a decrease in the rates, and at a Commission hearing the electric company presented schedules which would mean a saving of $80,000 a year to the city. The compromise, however, was not accepted and the city presented its own schedules, which it was believed would save $150,000 a year, with the intention of carrying the case through a trial before the Commission if another offer was not presented by the company.

The compromise just reached was the outcome of these negotiations. The city then arranged to have its expert work with the expert of the company in figuring the schedules for each class of service which would produce the total decrease. In studying the rates as a basis for the compromise, the different classes of service offered by the company were taken separately. The city's lighting bill will also be reduced.

Maryland

Competing Busses Cut Rates

A MOTOR bus transportation fight has been going on between the lines owned by the Pennsylvania Railroad and the Nevin Bus Line, an independent company, both operating between Baltimore and Washington. The latter group began service on April 20th announcing the one-way fare to Washington as $1.25 and the round-trip tariff as $2.25, the prevailing rates. The opposition, in addition to reducing the round-trip fare to $1.75, made the one-way price $1.

Joseph L. Kiekes, transportation engineer of the Public Service Commission, it is reported in the Washington *Star*, said the

Nevin organization had secured permits from the Commission to operate interstate service, but that neither the Pennsylvania, in its own name, or in the name of the Philadelphia Rapid Transit Company, had secured such permits. The Pennsylvania Railroad recently took over the Washington Motor Coach Company and is now operating these busses.

George F. Cassidy, general manager of the Nevin line, is quoted as saying that his company had been warned of opposition if it began to operate. He said his company would meet the cut by lowering the fare below $1.

Massachusetts

Hearing in Worcester Case

THE hearing of the Worcester Electric Light Company case will not come up in the Federal District Court until June at the earliest, it has been prophesied. The hearing has been set ahead in order to accommodate Lothrop Withington, attorney for the Commonwealth, who is making a trip to Hawaii.

The case involves an appeal of the utility from the decision of the Commission ordering a reduction in rates from 7 cents to 5 cents per kilowatt hour. The controversy was heard before a master, whose report involved points of law of considerable importance dealing with the proper basis of return and apportionment between classes of consumers. Both sides filed exceptions to the master's report.

Final Arguments in Gas Case

CONCLUDING arguments were made on April 25th by Robert G. Dodge for the West Boston Gas Company and Larue Brown for petitioners protesting against rates. The hearing was closed with the understanding that counsel for both sides might present certain data within a reasonable time.

The argument by Mr. Brown included an attack upon the business judgment of the company in its extensions of plant, its land deals, coal contracts and disposal of coke, and an increase in the salaries of officers.

Attorney Dodge defended the company's land deals, declaring that although when the land was purchased there was no need for it, a need developed later. He also answered the other attacks on the utility, declaring that they were unwarranted and should not have been made.

Fitchburg Wants Lower Rates

THE Commission on April 23rd began the consideration of petitions for lower rates for service furnished by the Fitchburg Gas & Electric Company. Eugene A. Turcotte of Fitchburg, representing the petitioners, informed the Commission that he was prepared to submit evidence that the people of Fitchburg are paying from 11 to 12 per cent more than residents of certain other communities on bills amounting to from $2 to $4.64. A group of questions, which company officials intimated they would endeavor to answer in the course of the hearings, were submitted at the hearing by Mr. Turcotte:

1. What is the cost of manufacturing electricity in Fitchburg?

2. Does the local company purchase current from the New England Power Company?

3. Does the company keep a scientific cost accounting, i. e., does the company know just what it costs to serve these different classes of customers: domestic, commercial, power, and street lighting?

4. If all these forms of service are produced at a joint cost, is not the company charging all the traffic will bear regardless of the profits or losses in each class of service?

5. Does the Tenney Syndicate which controls the Fitchburg Gas & Electric Light Company belong to or is it connected with the National Electric Light Association?

6. Does the Fitchburg Company contribute any of its earnings to the National Electric Light Association for advertising or propaganda?

7. Will you tell us the amount contributed for the purposes just mentioned?

8. Have you read any of the evidence submitted to the Federal Trade Commission showing enormous expenditures for propaganda by the Power Trust with which your company is associated?

9. In order to make a surplus appear smaller, power companies sometimes use such surplus to erect costly buildings. Was such a surplus used in the erection of the present building quite recently?

Michigan

Financing of Detroit Lines

ASSERTING that the present fare of the Detroit Street Railways is insufficient to meet the demands that are being made upon the system for extensions and improvements in service, John H. Morgan, auditor for the municipally owned lines, according to a report in the Detroit *Free Press*, has recommended a bond issue of $15,000,000 for the use of the department. Mr. Morgan states that the system cannot keep pace with the growth of the city on the present revenue because earnings are insufficient.

That the fare of the municipal railway has been too low to provide for track rehabilitation from the revenues received; that insufficient funds are available for purchase of new equipment; and that better service can only be obtained through refinancing, it is stated, has been known to executives of the system for several months, if not for years. But the report of the auditor is said to be the first public admission of these conditions, although several years ago charges were made that the financial statements issued monthly did not present a true picture of the condition of the lines. The account in the *Free Press* continues:

"Several months ago the question of increasing the fare was raised, but later abandoned due to the belief that such a movement was 'not good politics.' In lieu of an increase Morgan now suggests that the council be asked to appropriate $15,000,000 to be used by the D. S. R. as it is needed. The street railway department could then use this money to provide better service and also to construct new lines to newly developed sections of Detroit."

Missouri

Lease of Telephone Lines

THE Commission has been considering the proposed leasing of the Kansas City Long Distance Telephone Company properties by the Southwestern Bell Telephone Company. The lease as proposed is for a 5-year term with an annual rental of $35,000. It concerns long-distance connections between thirty-four independent and thirteen Bell exchanges in Western Missouri, in addition to points in Eastern Kansas.

Objections to the proposed lease have been entered by R. J. Ingraham, assistant city counsellor of Kansas City, and by the Middle-States Utilities Company, an independent telephone organization operating in Northwest Missouri and Southern Iowa. The city's objection is based upon the ground that competition would be stifled, while the Middle-States Utilities Company objects on the ground that it could not obtain connections at certain points with the Bell organization that it alleges could be obtained with the Kansas City Long Distance Company should the latter continue in business.

New Jersey

Opposition to Water Diversion

ATTORNEY-GENERAL William A. Stevens, it is reported in the New York *Sun*, has recommended to Governor Larson that New Jersey file suit in the United States Supreme Court to restrain New York city from diverting water from the tributaries of the Delaware river. New York's proposed diversion followed the failure of New Jersey and Pennsylvania to ratify a tri-state treaty for allocation of the waters of the Delaware between the three states.

The attorney-general also suggested the advisability of New Jersey applying for leave to become a party to the diversion suit of Connecticut against Massachusetts, now pending before the United States Supreme Court, in order "to impress the court with the magnitude of the question involved and to avoid an adverse precedent in that case which would be unfavorable" to New Jersey.

The Board of Water Supply of New York city has completed plans for a diversion to be accomplished by a watershed with an area of about 610 square miles. Application has been filed by the city with the Commission of Water Power and Control of New York state for approval of the diversion. Haste in the New Jersey action is said to be imperative to insure a decision by the Supreme Court, if possible, before New York city starts work on the project.

Hackensack Water Rates

THE withdrawal of Bergen county towns from the opposition marshalled against the 20 per cent increase in water rates of the Hackensack Water Company has left the Hudson county communities to fight the rate increase alone and has also caused a rift between the municipalities of the two counties over the question of allocating rates.

Experts employed by the Bergen county municipalities, it is reported, are convinced that further opposition would be useless; that the water company, if it insisted, could have obtained even higher rates than those demanded.

Hudson county representatives, however, insist that the increase is not justified and especially that no increase should be granted in rates to Hudson county, where rates are now higher than those collected in Bergen county.

New York

Street Car Companies May Operate Busses

A NEW law approved by Governor Roosevelt on April 17th, in the opinion of traction lawyers, gives street railway companies the right not only to substitute busses for trolley cars without change in existing franchises but also to establish bus routes to supplement existing surface systems.

The measure provides in part: "Whenever the Commission shall be of the opinion, after a hearing, had upon the application of any street railway corporation or railroad corporation, that the public interest will be served by the operation of stages, busses, or motor vehicles, wholly or partly in place of or supplemental to cars or trains upon tracks, on any portion of the route of such railroad, the Commission may make an order authorizing such whole or partial substitution or such supplemental operation and thereupon such corporation shall be authorized to operate busses or motor vehicles upon such portion of its route. . . . The Commission may also make an order authorizing any street railroad corporation or railroad corporation to operate stages, busses, or motor vehicles upon streets, highways, and public places not included in, but forming a route or routes or portion of a route connecting with any part of the route of such railroad or forming deviations therefrom or in connection therewith, provided such corporation obtains the consent or consents of the local authorities, as required by the Transportation Corporations Law."

Decision Expected in Electric Rate Case

A DECISION in the 5-year fight by the city of New York for a reduction in the cost of electric current may be handed down about the first of June, according to an announcement by Commissioner William R. Pooley, reported in the New York *World*, following cross-examination at a hearing before him of Dr. William C. McClellan, authority on electrical construction, by attornews representing the New York Edison Company.

Dr. McClellan testified to an appraisal of $245,574,784. Jacob H. Goetz, counsel for the utility company, inferred that the expert had failed to take into account such items as maintenance of reserve power, expenses preliminary to organization, and going value.

Ohio

Gas Rate Briefs

BRIEFS for the state of Ohio in the city-state gas suit to prevent the East Ohio Gas Company from discontinuing its service at Cleveland pending its battle for higher rates were filed in the Cuyahoga county appellate court on April 14th by Attorney General Gilbert Bettman.

City Law Director Carl F. Shuler had already filed the city's brief in the court battle that had come into the court of appeals from a common pleas court decision which gave the East Ohio the right to abandon its

mains and shut off service to thousands of gas consumers in Cleveland and adjacent communities.

A temporary injunction was granted by the appellate court to the city restraining the gas company from stopping service. The court will hear arguments on the briefs filed and will rule whether to allow a permanent injunction. It is expected the case will go to the Supreme Court.

Gas Rates in Columbus

COLUMBUS city officials have been considering a new rate ordinance governing the gas service of the Ohio Fuel Gas Company. The rate provided in the ordinance is 55 cents a thousand with a 65-cent service charge. The present rate fixed by Federal Judge Hough is 48 cents a thousand, with a minimum charge of 75 cents.

E. M. Tharp, director of public relations for the utility company, it is reported in the Columbus *Citizen*, has estimated that the average price of gas in Columbus under the new rate proposal before the city council would be 62.8 cents per thousand cubic feet. On the basis of this estimate the proposed new rate is an increase of almost 15 cents a thousand.

Mr. Tharp challenged the statement that the service charge will hit the "poor man." Doctors' and dentists' offices and apartment dwellers are the small consumers, he said. Many "poor families," according to his statement, depend upon gas for all heating purposes and their bills are $14 to $18 a month.

Toledo Gas Ordinance

LEGISLATION authorizing the creation of a Gas Rate Commission to study a proposed revision of natural gas rates was amended by the Toledo council on April 13th to give the Commission specific powers to recommend new rates. This was approved by Mayor W. T. Jackson on April 23rd.

The Commission will consist of three members. One of these is to be appointed by the mayor, one by the vice-mayor, and the third to be selected by the two appointees. It will have the power to check over the statements of receipts, expenditures, inventories, and appraisals of the Northwestern Ohio Natural Gas Company, which serves Toledo.

Pennsylvania

Final Arguments on Telephone Rates

FINAL arguments in the case of Johnstown and other municipalities against the rates of the Johnstown Telephone Company, which were established in the Spring of 1927, were heard by the Commission on April 15th.

Differences in the appraisals seem to be the main point at issue. City Solicitor Tillman K. Saylor contended that the old rates were ample to give a fair return on the rate base advocated by the complainant, while Attorney Hull, appearing for the company, argued that the appraising engineers for the company took more time and were more nearly correct in their figures.

The complainant made much of the manner of increasing the rates, alleging that they were increased in March 1927 to become effective April 1st of the same year with a notice attached that if the rates were protested a second rate would be announced. There was a protest, it is stated, and a second increase effective May 1, 1927 was announced. The first hearing was held in June 1927.

The claim is made that the old rate should be reinstated or reduced and that the excess already collected be refunded.

Gas Rates for Heating

THE Philadelphia Suburban Counties Gas & Electric Company on April 6th, it is stated in the Upper Darby *Herald-Tribune* filed with the Commission a new rate for gas for house heating.

The new rate would be 75 cents a thousand cubic feet of gas for heating purposes, representing a saving over the prior rate of

approximately 20 per cent. Its main purpose is to make gas for domestic heating purposes available for the average home.

"As a basis of comparison," H. R. Sterrett, regional vice-president of the company, is quoted as saying, "we might consider the house whose present fuel cost amounts to $210. The same house could be heated by gas, at the 75-cent rate, for approximately $300, or about $90 more than is generally the case at present. But to the home owner who employs a heater man, this differential is entirely wiped out. On the other hand, there is a certain intangible value which must be attached to gas heating conveniences, because of automatic regulation, and the extended life of draperies, wall paper, paint, etc., which this system of house heating brings about. There are in the neighborhood of 500 homes now being heated by gas in Suburban-Counties territory. Over 3000 installations are anticipated by 1933."

Water Rights Disputed

THE city of Philadelphia has been seeking in court to restrain the Philadelphia Suburban Water Company from taking 10,000,000 gallons of water daily from Perkiomen Creek. The city contends that the company should content itself with taking the water at flood times and storing it for future use.

The company, says the Philadelphia *Public Ledger*, has decried the selfishness of the city in seeking to bar other users of the vast supply of water available in the Schulykill and its tributaries. The company, it is reported, does not deny the city has riparian rights in the Schuylkill but contends that those rights do not extend all the way to Perkiomen Creek. It is further contended that the city has the right to use the river water for the purposes of the park and not for general city use.

Wisconsin

One-Man War On Car Company

PERCY Lux on April 13th started a one-man war against the zone fares of the street car company in North Milwaukee. The war ended on April 17th.

Mr. Lux, who some time ago was elected alderman in North Milwaukee on an out and out platform of annexation to the city of Milwaukee, had used as a campaign argument the possibility of having one fare zone in North Milwaukee instead of two zones. When one hundred days after annexation, the two zones continued, Mr. Lux started boarding cars and refusing to pay zone fares, being forthwith ejected from the conveyance.

In calling a truce he said that his objective in refusing to pay zone fares was the forcing of public attention to the fact that the citizens of the section were very much interested in the matter and that he desired also to discover what progress was being made before the Commission on the question of fare changes, and if there was any unnecessary delay in handling the case. After a conference with the city attorney and attorneys for the company he was convinced that there were no obstacles being thrown in the path of an early solution, and abandoned his attempts to ride for one fare.

Mass of Figures too Much for Consumers

WHEN a hearing was begun on April 22nd in regard to Wauwatosa's demand for lower gas rates several citizens were on hand to register their protest. The technical side of the matter was heard first, however, and it is reported in the Milwaukee *Wisconsin News* that as the hearing proceeded, the facts and figures became more puzzling, and after a few minutes the civilians began to drift out of the hearing room, more or less dazed by the flood of statistics, until only a handful of the interested ratepayers remained.

Ewald Haase, vice president of the Wauwatosa Gas & Lighting Company, testified that of all Wisconsin cities below 30,000 population only one had a lower gas rate than Wauwatosa. The domestic users' rate is $1.15 per 1000 cubic feet. Mr. Haase also pointed out that the city is so spread out that laying of the mains is costly.

City Attorney Albert Houghton raised the point that when the Milwaukee Gas Light Company recently lowered its rate 5 cents a 1000 cubic feet to the Wauwatosa Gas & Lighting Company, the reduction was not passed on to consumers.

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 1929B NUMBER 5

Points of Special Interest

Titles

Index

INDIANA PUBLIC SERVICE COMMISSION.

JAP JONES et al.

v.

WABASH VALLEY ELECTRIC COMPANY.

[No. 8894.]

Apportionment — Valuation — Local and general electric systems.

1. The general power system and the general distribution system of an electric utility serving several different cities, towns, and communities should be considered separately from the local distribution system and works located in such communities in a rate case inaugurated by the petition of patrons in one of them, p. 575.

Valuation — Failure to apportion — State law.

2. The valuation of all of a utility's property used in serving several different communities and including the utility property in such communities without apportionment would be an obstruction and violation of the spirit of the state public utility law, which is founded upon the right of any ten persons in any community to petition the Commission for an adjustment of rates or service in their own particular community, p. 575.

Valuation — Investment of funds advanced by consumers.

3. Revenues paid by patrons, regardless of the form in which paid, cannot be used lawfully for new construction as permanent investment, p. 575.

Valuation — Present fair value — Factors to be considered.

4. Fair value and present value are interchangeable terms when used in a rate case and must not only show the value at the time of the inquiry but also reflect proper deductions from the history of the utility as well as reflect a glance at the future prospects and probable consequences of a proposed rate revision, p. 582.

Valuation — Fair value — Factors to be considered.

5. In determining fair value, no single evidence of value may control although the cost to reproduce new, historical cost, and the representations of value made by the utility to other public bodies may deserve consideration as throwing light upon the evidences of value before the Commission, p. 582.

Depreciation — Duplication of return.

6. When a fund for depreciation is provided by the terms of mortgage upon the property of a public utility and when such fund is shown to be adequate, additional allowance for depreciation cannot be justified and should not be allowed, p. 587.

Valuation — Working capital — Electric utility.

7. No allowance was made for working capital for an electric company which had been previously authorized to sell securities and had, in fact, sold them for the express purpose of providing working capital, p. 588.

Rates — Active room basis — Optional experiment.

8. An electric company was required to put in effect an optional rate schedule based upon an active room basis, and to keep such optional rate in effect until further order of the Commission, p. 593.

Return — Percentage allowed — Electric utility.

9. Rates for an electric utility were adjusted upon an estimation of revenue calculated to yield a return of 7 per cent on the fair value of the utility property, p. 593.

Depreciation — Investment of funds — Electricity.

10. An electric company was allowed to set up a depreciation fund not to exceed 4 per cent per annum of the depreciable property used and useful in the utility service, and to invest the same temporarily in new construction for a period of not more than twelve months, p. 594.

[January 26, 1929.]

PETITION of an electric company for increased rates for service; rates adjusted.

Appearances: Barnes & Johnson, by Fred B. Johnson, Indianapolis, Ralph K. Lowder, City Attorney, Martinsville, and O. C. Toner, Martinsville, for petitioners; Fesler, Elam & Young, by J. W. Fesler, Indianapolis, Glenn Van Auken, Indianapolis, Bowers, Feightner & Bowers, by Fred H. Bowers, Huntington, and S. C. Kivett, Martinsville, for respondents.

Singleton, Chairman; **Harmon**, Commissioner: Seventeen citizens of the city of Martinsville, Indiana, patrons of the Wabash Valley Electric Company at Martinsville and vicinity in the use of electric current and gas, filed with the Public Service Commission, on March 16, 1927, their petition as follows:

"The following named patrons of the Wabash Valley Electric Company, of Martinsville, Indiana, hereby petition your Honorable Body for reduction of electric and gas rates in Martinsville, Indiana."

The first date of hearing was set for June 20, 1927. Upon the plea by the utility that preparations for hearing could not be completed by that time, by agreement of the parties postponement of date was had to July 12, 1927, at Martinsville. In the meantime the petitioners and other citizens of Martinsville and the respondent utility conferred in an effort to agree upon rates. These conferences were without success.

On July 7, 1927, the utility offered for filing with this Com-

mission a preliminary optional schedule of rates for electric service, said optional rate schedule being on the basis of active rooms and being usually referred to as the "active room basis" for electric rates. As a result of this preliminary optional rate schedule being filed, the majority of the petitioners agreed with the utility to further postponement of date of hearing from July 12, for the purpose of obtaining the experience afforded by this optional rate schedule.

On July 9, 1927, this Commission approved an order based upon the above agreement and fixing Tuesday, November 8, 1927, as the time to which such hearing should be postponed. Later it was found necessary to change the date to November 7, 1927, and this was done.

The order approved July 9, 1927, approved the filing of the active room, preliminary, optional schedule; denied authority for respondent to put in effect certain rules filed with said schedule until such rules should be approved by this Commission; required the utility to report monthly consumers' data, setting forth the experience of the utility and its patrons with the rates provided in said active room schedule; required the utility to file an amended schedule applicable to power consumers and especially applicable to the demand charge for such consumers, and to provide a rate applicable to use of current by large users of light, such as sanitariums. In the approval of this order with the above provisions all members of the Commission concurred.

Consistent with the proceedings outlined above, hearing was called in the City Building at Martinsville, Indiana, at 10 o'clock A. M., November 7, 1927, all the parties being present and participating. Prior to such date respondent had filed a motion that petitioners be required to make petition more specific. Omitting caption and signatures, said motion was in words and figures as follows:

"Comes now the Wabash Valley Electric Company, respondent in the above numbered cause, and moves the Commission to require petitioners to make their petition more specific herein in the following particulars and each of them, separately and severally, to-wit:

"1. That petitioners be required to state what rates, tolls,

charges, schedules, joint rate or rates, in which petitioners are directly interested are in any respect unreasonable or unjustly discriminatory.

"2. That petitioners be required to state specifically what regulations, measurement, practices, or act affecting or relating to the service are in any respect unreasonable, unsafe, insufficient, or unjustly discriminatory.

"3. That petitioners be required to state specifically what service is inadequate or that cannot be obtained.

"4. That petitioners be required to state specifically some grounds for a complaint as set out and authorized by the statute governing hearings before the Public Service Commission.

Memorandum

"It will be observed that the petition herein states no cause for a hearing as required by the statute. The petition purports to be by patrons with a general request that the Public Service Commission reduce gas and electric rates in Martinsville, Indiana. This does not raise any question of fact to be investigated. There is not a claim that the rates are too high; that they are unreasonable; or in any particular improper. The Commission, the utility, and the public are entitled to know just what issues are to be presented.

"We respectively submit that the motion be sustained."

At the beginning of the proceedings this motion was discussed at considerable length and petitioners were required to file such amended petition. Amended petition was filed by petitioners in words and figures, as follows:

"Come now the petitioners and the city of Martinsville in said above entitled cause and by way of answer to respondent's motion to make the petition more specific, say:

"That the electrical rates, tolls, charges, schedules, joint rate or rates of the respondent charged its consumers in the city of Martinsville are unreasonable and excessive in that the rates produce a gross income or net revenue which provides more than an adequate return on the fair value of the property of respondent devoted to the use of the public in the city of Martinsville, Morgan county, Indiana."

Respondents filed their answer to such amended petition and this answer was debated at considerable length. The answer was as follows:

"Comes now the respondent, Wabash Valley Electric Company, and an amended petition having been filed after 1:45 o'clock P. M., of Monday, November 7, 1927, now at 10:00 o'clock A. M. of Tuesday, November 8, 1927, reserving all exceptions and without waiving any right to have a reasonable time in which to file an answer to said amended petition and prepare for a hearing on said amended petition, and expressly asserting and claiming the right to further time in which to answer said amended petition and to file intervening or cross-petition by respondent or other interested parties; and specifically stating that it is impossible for respondent to fully and properly present by answer or otherwise at this time the rights of respondent and consumers other than the petitioners; respondent in an effort to comply with the demand of the sitting Commissioners and hereby giving notice that further answers and pleading may be presented herein, tenders three separate paragraphs of answer to said amended petition herein and asks that the same be accepted by the Commission upon the conditions herein stated, which said paragraphs are as follows:

Paragraph I

"Respondent for answer to the amended petition herein denies each and every allegation in said amended petition contained.

Paragraph II

"The respondent, for a second paragraph of answer to the amended petition herein, alleges and says that the city of Martinsville and territory adjacent thereto is one of the component parts of the territory served by the Wabash Valley Electric Company and receives electrical energy from various sources of supply as now provided by said system as a whole, and has the use and benefit of property used and useful outside the corporate limits of the city of Martinsville, and respondent further says that the rates, tolls, charges, and schedules for electrical service

as charged in the city of Martinsville, Indiana, and now in effect, are not unreasonable or excessive.

"Wherefore, respondent asks that the claims of petitioners be disallowed.

Paragraph III

"The respondent for a third paragraph of answer to amended petition herein alleges and says: That it is a public utility as the same is defined by the laws of the state of Indiana and as such utility is now and has been for years last past engaged in the furnishing of electric service for residences, commercial and power purposes in a territory served by respondent comprising more than fifty communities, cities, and districts and, in addition to said services, furnishes large quantities of electrical energy for the operation of mines, gravel pits, and other industries outside of any municipal corporation.

"That said respondent obtains its electrical energy by purchase from interconnecting transmission lines owned and operated by other corporations and also has and maintains four plants for generating electric current for the use of the entire system in cases of emergency and when otherwise required. That said plants are maintained at the cities of Martinsville, Spencer, Sullivan, and Clinton, Indiana, and the value and operating expenses and taxes of said plants are charged to the general power costs of said Wabash Valley Electric Company system. That said costs are so charged for the reason that said several generating plants are maintained and operated for the use of the entire system and not for any one district or community.

"That in connection with said business, the respondent owns, maintains, and operates numerous transmission lines interconnecting the various communities, districts, and power sources and so maintains the same and has such connections that it is possible to have electrical energy from different generating sources and interconnecting points and all are used and useful in performing its service of furnishing electrical energy to the various cities, towns, and districts and other uses of its service. That by reason of said fact, it is impossible to fix a specific cost to any community or district without considering it in its rela-

tion to all other districts, communities, and persons served by said respondent throughout its said system. That without said interconnecting system and interdependent relations as herein described it is impossible to furnish the kind and character of service as now furnished within the rules of reasonable economy and with respect to natural equities and in such manner as to furnish equal opportunities for homes, factories, commercial, and other uses. That in addition to said generating and transmission properties, said respondent has and maintains a distributing system confined largely to the several municipal corporations and territory adjacent thereto. That one of the territorial districts as served by said respondent is what is known as the Martinsville District, which covers the territory within the corporate limits of Martinsville and certain territory adjacent thereto, and in connection with said service respondent has and maintains an office in the city of Martinsville to operate said service and care for said properties and to do any and all things necessary and proper in connection with the furnishing of electric service in said district.

"Respondent further alleges and says that prior to July, 1927, respondent had in force, by and with the approval of the Commission, a schedule of rates and charges for electric service in said Martinsville District. That said schedule of rates and charges were based upon what is generally known as the Block system. That in the light of experience and the development of the electric service generally, and the increased use of electrical appliances, it became and is generally known that in order to furnish electric service for such appliances as well as light, the said schedule of rates as heretofore used can not be maintained and give equal opportunities to the various classes of homes without unfair discrimination and can not be maintained consistent with economic principles for operating a utility such as respondent and can not be operated on principles of natural equity and fair dealings to the several districts served.

"That because of the facts as herein alleged, long before the filing of the original petition herein, respondent began an extensive study of schedules and plans for furnishing electric service with a view of placing in effect schedules of rates which

would protect the equities of all of its consumers and the several districts served, and furnish equal opportunity, without unreasonable discrimination, and at the lowest practical cost, and in a manner to encourage the use of electrical appliances consistent with the needs of the communities served, and in such manner as to serve its different patrons and its different districts without unfair discrimination either as between the user in any district or as between the several districts.

"That prior to July 9, 1927, after the filing of the original petition herein, respondent did prepare and file with the Commission a schedule of rates for electric service in the district of Martinsville as the same was then applied to residence service and also filed rates covering service for commercial use, sanitariums, and power purposes, all of which said rates and schedules are now in force under the order of the Public Service Commission, subject to change upon a final hearing and after observation of results over a reasonable trial period, which said schedule of rates as now on file is now referred to and made a part of this answer the same as if written out in full as a part hereof.

"Respondent further says that said schedule of rates for residence service has been in force and under observation for current consumed beginning July 15th, and readings of August, September, and October 15th. That respondent is carefully noting the results of said schedule and rates as applied to the several services and all classes of users in said district to which said rates apply. That in order to fully and fairly determine the practical result of said rates, it will be necessary to have a practical test of the same over a period of time and actual conditions as the same varies from month to month and season to season and that a satisfactory test of said rates can not be had under a total trial period of six months.

"Respondent further says that as a result of scientific studies of rates and the practical experience to this date and the observations made, it believes and now alleges the facts to be that said schedule of rates as filed and put into force temporarily by the Commission will result in a reduction of cost to the electrical consumers of said district of from $10,000 to

$15,000 per year and that the reduction to consumers would be distributed fairly and equitably to the several services and to the several consumers in the different services and without unjust discrimination.

"Respondent further alleges the facts to be that said schedule of rates will make possible the use of electrical appliances in all classes of homes giving to the 3, 4, and 5 room houses equal opportunities with the larger houses and at a cost that will permit the general use of said appliances consistent with practical home economies.

"Respondent further says that the reductions so accomplished are such as will reduce temporarily the income of said utility below a fair and unreasonable return upon the value of its property used and useful in performing the service, but said utility asks for the adoption of said rate for the reason that it believes, and now alleges the facts to be, that with said rates greater use can be made of electric service and under conditions where the same can be served by the utility at the low cost and will finally be sufficient to provide a fair and reasonable return upon the value of its property used and useful in performing the service and without unjust discrimination to any class of users and without unjust and unreasonable discrimination as between the several districts or communities served by respondent.

"Wherefore, respondent respectfully asks that the matters and things herein alleged be inquired into that such additional time for observation and experience be fixed as in the judgment of the Commission the facts warrant, and, upon a final determination of this cause, the form of schedule now temporarily in force be made permanent with such changes in the amount in the scale of rates now fixed in said schedule as the evidence may show are necessary, if any, in order that the rates may be just and reasonable and such as will furnish equal opportunities and distribute the economic advantages of said rates fairly among the several classes of users and without unjust discrimination to any other district or community served by respondent."

The first session of this hearing continued through Novem-

ber 7 and 8. During this hearing petitioners introduced evidence. It was agreed by petitioners that respondents would not be required at that time to cross-examine these witnesses, because petitioners agreed to accept respondent's representations that it had not completed its appraisals, was not ready to enter into hearing and, therefore, could not enter into hearing with prospect of completing the same.

Respondent had moved that ten days be given in which to respond to the amended petition. This motion was denied, the amended petition was accepted and respondent was given an exception to said ruling.

Before the introduction of evidence by petitioners, an opening statement was made by O. C. Toner in behalf of petitioners and by S. C. Kivett in behalf of respondent.

Witnesses of petitioners examined were Earl L. Carter, chief engineer of the Public Service Commission of Indiana; Robert L. Gwin, accountant then connected with the accounting department of the Public Service Commission of Indiana, having been in charge of the audit made by the Commission's accounting department of respondent's books and records, and Lawrence Carter, certified public accountant, who identified petitioners' Exhibits Nos. 3 to 8 inclusive. Cross-examination by respondent of above witnesses was postponed to time of subsequent hearing.

The date for subsequent hearing was agreed to by all the parties as January 9, 1928, the same to be held in the City Building at Martinsville, Indiana. At the time agreed upon public hearing was resumed. Commissioner Harmon joined the hearing Commissioner during all of the sessions beginning January 9. During this hearing all of the witnesses who testified for petitioners at the preceding session were questioned by respondent in much detail. In addition, the following persons offered their testimony in behalf of respondent: Adam Gschwindt, superintendent of the electric utility at Rockford, Illinois; L. B. Schiess, Indianapolis, treasurer and a director of the Wabash Valley Electric Company, Northern Indiana Power Company, the Indiana Service Corporation, the Attica Electric Company and other utility companies affiliated with respond-

ent; B. E. Miller, Madison, Wisconsin, introduced as an expert in electric rates; J. F. McGuire, Fargo, North Dakota, manager of the Union Light, Heat & Power Company, and introduced as an expert witness in electric rate schedules; William Beardsley, of Pekin, Illinois, in charge of operation and rates of the Central Illinois Light Company at Pekin; Charles W. Spooner, Chicago, Illinois, a member of the firm of Spooner & Merrill, appraisal engineers; E. J. Haugh, Chicago, Illinois, expert accountant, representing the firm of Haskins & Sells, certified public accountants; Robert S. Drew, Evanston, Illinois, representative of the Business Research Corporation; William E. Vogelback, of Evanston, Illinois, public utility engineer, giving especial attention to rehabilitation of electric properties involved; B. H. Lybrook, general superintendent of the power system operating department of the Wabash Valley Electric Company; E. J. Kowalke, collector of miscellaneous statistics on the operation of the Wabash Valley Electric Company for the use of its present and other officers, and L. B. Andrus, president of the Wabash Valley Electric Company and president of several similar companies affiliated with it.

This hearing continued at Martinsville, Indiana, during January 9, 10, 11, and 12, 1928, and further hearing was had in the rooms of the Commission, at Indianapolis, Indiana, January 13, 1928. By agreement of the parties, time was fixed for filing briefs, and briefs were filed. Reply briefs were filed by the parties also, thus completing the record in this cause.

During the hearing the following exhibits were introduced by petitioners:—

Exhibit No. 1–A

Appraisal by the Public Service Commission's engineering department of electric property in Martinsville and vicinity used in normal operation, on the basis of cost to reproduce new.

Exhibit No. 1–B

Appraisal by the Public Service Commission's engineering department of electric property in Martinsville not used in normal operation, on the basis of cost to reproduce new.

Exhibit No. 1–C

Appraisal by the Public Service Commission's engineering department of electric property used in normal operation, on the basis of estimated original cost.

Exhibit No. 1–D

Appraisal by the Public Service Commission's engineering department of electric property in Martinsville not used in normal operation, on the basis of estimated original cost.

Exhibit No. 2

Public Service Commission's report of audit of books of the Wabash Valley Electric Company and the Martinsville branch of said company.

Exhibit No. 3

Petitioners' calculation as to fair value of property based upon engineers' appraisal of estimated cost to reproduce, plus estimated going value and estimated working capital.

Exhibit No. 4

Petitioners' statement of income account based on property used and not used in normal operation.

Exhibit No. 5

Same based on property used in normal operation.

Exhibit No. 6

Petitioners' exhibit of operating expenses and adjustments for period June 1, 1923 to December 31, 1926.

Exhibit No. 7

Amount of depreciable electric property calculated by petitioners as used in normal operation and as not used in normal operation.

Exhibit No. 8

Petitioners' comparison of effect of the active room basis schedule, comparing a consumer with five active rooms and the cost of a like amount of current for a commercial consumer.

Respondents introduced the following exhibits during the hearing:—

Exhibit A

Operating statements for the year ended July 31, 1927.

Exhibit B

Comparison of local operating expenses and taxes (exclusive of power costs) for years ended December 31, 1926, and July 31, 1927.

Exhibit C

Additions, improvements, and betterments, actual and estimated.

Exhibit D–(1 to 13, inclusive)

Spooner & Merrill's appraisal as of September 1, 1927, allocation to use utility property—(consisting of five sheets).

Exhibit E

Spooner & Merrill's appraisal of electric property at Martinsville.

Exhibit F–1

Summary of retirements and maintenance charges, ratio thereof to plant, property, and franchises by periods from May 31, 1923, to October 31, 1927.

Exhibit F–2

Haskins & Sells' report on retirements of plant property from June 1, 1923 to October 31, 1927.

Exhibit G

Summary of gross income before depreciation and percentage ratio thereof to plant, property, and franchises and working capital by periods from May 31, 1923, to October 31, 1927.

Exhibit H

Report by Business Research Corporation on expense and fixed charges applicable to residence lighting service as a minimum monthly charge in Martinsville.

Exhibit I

Report by William E. Vogelback, engineer, on rehabilitation study January 3, 1928.

Exhibit J

Condensed plant sheets for Wabash Valley Electric Company as of August 31, 1927, consisting of two sheets.

Exhibit K

Comparative operating data by months for the first eleven months of 1927, in duplicate.

Exhibit L

Results of application preliminary optional rates on the active room basis schedule on trial in Martinsville.

Rates for Gas Eliminated.

Stipulation was agreed to by all parties that the consideration of rates for gas should be eliminated from this cause, for the reason that the utility had filed a reduction in the rates for gas. Said rate schedule and said stipulation were accepted and approved by the Commission.

Discussion of Delay.

During the hearing the respondent was asked to agree upon a date certain as of which date fair value should be found. It refused to do so. That matter was left with the Commission.

The evidence of value fell into form as of about November 30, 1927. The Commission believes that value should be found as of that date, although public hearing was conducted principally in January, 1928.

Experts were brought from several states to testify upon active room form of schedule. Their testimony was so varied as to details of form in such schedules in their respective utilities and was so unanimous as to the benefits of such schedule that the Commission felt inclined to obtain experience in the Martinsville field served in order to throw the light of experience upon the expert testimony in the record. Accordingly the experience of the company for the year ending September 30,

1928, was obtained. Such study will be considered only as it may tend to clarify evidence in the record and not as evidence in this cause.

Not only residence lighting but commercial, sanitarium, and power service were affected by new preliminary, optional schedules. The study referred to above was extended to these classes of service for the purpose stated above.

The utility was provided with copy of the study thus made and was requested to submit suggestions upon study of the same. The request was rejected by President Andrus, by letter.

The hearing Commissioner believes that these efforts have been in the interest of fairness, although they involved delay that has elicited some caustic criticism. Evidence in the form of prognostication should be tested by experience. Such test cannot be unfair to any one. The active room schedule is new in Indiana. It did not appeal with favor to the members of this Commission. The utility sought its own experience under it. The petitioners, for the most part, agreed to a period of experimentation. The Commission wished such period to be of some value to all parties; hence the effort to secure the experience of one complete year and comparison of the same with the block rate which had been in effect for several years.

Local Communities and the Utility Act.

[1–3] Respondent insists that *all* of its property (the entire Wabash Valley system) be valued for the purposes of this cause, meaning thereby that valuation should not be confined to physical property used and useful in serving Martinsville and located within the territory served. Such theory would involve finding fair value of all the Wabash Valley Electric property and allocating to Martinsville said community's share of total expense and return, and its share of the total property value.

This utility operates under an indeterminate permit, issued by the state of Indiana as provided by the Shively-Spencer Public Utility Act. The Public Service Commission of Indiana receives all of its authority from said act.

Section 9 of said act provides for such valuation, specifies certain elements that may be considered in determining fair

value and says further:—"In making such valuation, the Commission may avail itself of any information in possession of the State Board of Tax Commissioners or of any *local authorities.*"

Section 11 provides that the Commission shall serve a statement of value found "upon the public utility interested, and shall file a like statement with the clerk of *every municipality* in which any part of the plant or equipment of such public utility is located."

Section 14 provides that every public utility shall secure "the *consent* of the Commission and the proper *local authorities*" before availing itself of the benefits permitted by said section.

Section 57 requires the Commission to investigate rates, practices, and alleged discrimination upon petition or complaint of "any mercantile, agricultural, or manufacturing society or by *any body politic* or *municipal organization* or by *ten persons,* firms, corporations or associations . . . with or without notice" etc. Any (one) municipal organization is a proper party to petition.

Section 97 forbids the Commission to issue a permit authorizing "any public utility *in any municipality* where there is in operation a public utility engaged in similar service under a license, franchise, or permit" until after public hearing, etc.

Section 110 saves to municipalities their authority over the use of their streets, their authority over the kind and quality of utility service and their authority in many other respects, indicating that each municipality may preserve its identity as a unit of utility operation.

All sections of the Shively-Spencer Act tend to preserve for the local communities and for the local patrons (ten persons) the right to complain and the right to be heard, without incurring the burden of resisting the unreasonable and the unbearable expense of a rate case involving all other communities served by any utility which owns transmission lines for service of many communities.

Respondent's contention is so impracticable as to be prohibitive. One class of patrons in a local community could have, and often have, a just complaint which they would better suffer

than to undertake to secure relief, if respondent's theory should prevail.

The Commission believes the only practicable and equitable procedure to be that the general operation of respondent should be considered as such and should be considered separately from the operation of units serving local municipalities.

The right of ten persons and the right of any municipality to petition for reduction of rates or for adequate service would be abridged by the theory of respondent. The Indiana statute is specific in providing that ten persons or any municipality may petition and, the implication follows, that such right should not be abridged.

If "all the property used and useful," directly or indirectly, be valued in consideration of this rate case, it would not require a severe stretch of imagination to include in said evaluation the electric properties from which the respondent purchased current, though same are properties of other utility corporations.

In the case of the Hardin-Wyandot Lighting Co. v. Public Utilities Commission, 118 Ohio St. —, P.U.R.1928D, 560, 566, 162 N. E. 262, the supreme court of Ohio, in May, 1928, upheld an order of the Ohio Utilities Commission in which the Commission refused to include in the rate base "parts of the general plant situated in upper Sandusky, Dunkirk, Kirby, and other municipalities." The Ohio Case affected the city of Kenton, Ohio. The parts of the general plant excluded from the rate base, *supra,* were found by the court to be "used during a peak period to help the Kenton power house carry its load in territory outside of Kenton." The court said:—"It is self-evident in a rate controversy involving public utility rates charged in a particular municipality that only property used and useful in furnishing service in such municipality should be valued for the purpose of establishing such rate."

The court stated further:—"An allocation was made by the Commission upon the basis of consumption of electric current in Kenton as compared with the electric current consumption in other territory served by the utility."

The Ohio Case, *supra,* is readily adaptable to the instant

case. The allocation of the current required to serve Martinsville is the most convenient, the most accurate, and the most equitable method to follow. Such allocation in the instant case will place upon equal terms all communities served by this respondent. It will preserve the autonomy of each community served and will preserve for the citizens of each community the rights believed by this Commission to have been intended by the Shively-Spencer Public Utility Act to be sacred to them, viz.: the right to petition the state authorities for relief from excessive rates, from inadequate service and from discriminatory practices. It will protect the several communities from the burden of prohibitive costs of appraisals and audits in rate cases. Such excessive costs can not be avoided if the properties serving all communities served by the Wabash Valley Electric Company must be considered as a whole and allocated to determine a fair rate for service rendered by the distribution system and local management in a single community. The establishment of a fair rate must not exclude common sense from the methods used in determining it.

An examination of the respondent's appraisals will disclose the fact that certain parts of their property have been omitted entirely, and other portions have been so intermingled that it is almost impossible to determine what is, or is not, included.

Assuming, however, for the purpose of the illustration, that they have filed complete appraisals, would it not be well to consider briefly where this theory would lead to, if followed consistently? Assume that a petition was filed for a reduction of rates by the city of Martinsville. Would not this petition inevitably lead to an adjustment of rates, (if any change were made) in every one of the fifty or sixty cities, towns, and villages served by the Wabash Valley system? In some cases the rate might be fair, yet all would have to be changed to conform to the needs of the entire system. The city of Martinsville would have no interest in the city of Spencer, yet by filing a petition Martinsville, according to respondent, could set in motion machinery which would directly affect every patron of the utility served in the city of Spencer.

Another pertinent question which suggests itself, if respond-

ent's theory is accepted, is:—Could there ever be any classification of the cities or towns as regards the rates paid for service? Theoretically, every city and village is a component part of the whole structure, and, as such, would undoubtedly be entitled to the same treatment. Notwithstanding the fact that it might cost much more to serve some towns than others, all, in fairness, should join in carrying the burdens imposed by the system ownership. This being true, of course, the hamlet would take the same rate as the city, and, irrespective of cost to serve, would share equally in the blessings or burdens, as the case might be.

Again, as a practical question, under this theory, could there ever be a separate determination of a rate in any city without a complete adjustment for the entire system? Obviously not, if all towns are component parts of the same system which must be valued together. Applying this reasoning to the present case, could there be a determination of a separate rate for Martinsville with the record as it now stands?

In addition to evidence of value, other things must be shown in determining a proper rate base, among which are operating costs, depreciation, etc.

Is there any place in the record—any evidence as to operating costs in any municipality other than Martinsville? If there is no evidence of this kind, would there not be a vital lack of evidence both on the part of petitioners and respondent? In this connection should a single municipality ever be put to the burden of determining for a rate case these other elements entering into the establishment of the rate base? If this evidence is missing, would the Commission not be forced to do one of two things, namely, ask for additional evidence or find against both petitioners and the respondent on the ground of a lack of sufficient evidence. Such a course would be a travesty, to say the least. There should be some solution of the problem.

The answer is apparently plain. When the Shively-Spencer law was enacted, certain conditions existed and the law was undoubtedly formulated to meet those conditions. Franchises and permits to operate, each one separate and distinct, had been granted to the utilities then operating. No municipal corpo-

ration would have presumed to grant any rights outside its boundary, and any such attempt, of course, would have been useless. These franchises, when the law came into being, were exchanged for indeterminate permits, which did not enlarge the scope of the several operations, but simply changed the status of them in a legal sense.

If the Shively-Spencer act were repealed after the five year time limit had passed, these franchises would revert to their former status, subject to each and all of the limitations first imposed (§ 100). Remember also that the municipality may always purchase the "major part . . . of the property actually used and useful for the convenience of the public," etc. (§ 100).

Would respondent claim that, in order to make this purchase, the municipality would have to do all the things it insists must be done in the rate hearing in the case under consideration herein? If not, why should the rule be different in the one than the other?

It will be noticed that the purchase can only be made after a *hearing* and on value to be "determined by the Commission."

By § 29 of the act it was very evidently intended that the separate entity of each city, town, and village should be preserved. Clearly the granting of the franchise was a contract between the municipality and the utility and, while the operation of this contract may be suspended, it cannot under our Constitution be abrogated, nor could any ex post facto law be passed which would change its effect.

If there were any doubt about it being the intent of the law to maintain the separate entity of every municipal corporation in the state, § 41 of the act furnishes additional proof of the fallacy of this reasoning.

Very evidently the legislature, when it passed the Shively-Spencer Act, did not intend to build up state-wide utilities so large as to make it impossible to have any check on them, but they intended the formulation of a law which would be fair to citizens, municipalities, and utilities alike.

Cost of Energy at Gateways Is Equitable Basis.

Should the entire Wabash Valley Electric Company be appraised, the income calculated and fair return on all the property (both general and local) calculated, for the purpose of allocating to Martinsville its proportion of the physical property, its share in the income and its obligation in rendering its share of fair return? Or, should the total energy generated, purchased and sold be allocated upon the basis of the amount of energy delivered to Martinsville, said delivery of energy to include operating expense, taxes, fair return, etc., upon the generating system and property used and useful in delivery? The former method would bring the consumers at Martinsville face to face with an insurmountable proposition in a rate case. The patrons in any community are authorized by the Indiana law to petition for regulation of rates and service. The patrons of any single community in the Wabash Valley system would be prohibited (by the great expense) from undertaking a valuation of all the property of the system. If this valuation were undertaken by this Commission, the expense would be an excessive burden upon any single community and would, if allocated among all the communities served, be an expense to the other communities against which (in equity) they would have a right to rebel. In this connection could this Commission, without notice to all patrons of the utility, under the Constitution of both state and nation, "take property without due process of law" by increasing rates or apportioning costs in a hearing to which they were not parties.

The quantity of energy delivered to the gateways of the several communities is ascertainable. The cost of same, including taxes, return, etc. is ascertainable. The cost to serve each community is, therefore, ascertainable. The Commission believes that an impracticable method should not be employed when a convenient and fair method is available. Therefore, the Commission finds that the cost of current delivered at the gateways should be the method used in calculating the cost of service to Martinsville in the instant case and the terms of the order in this cause will be based upon such finding.

Against this theory it is argued that there must not be discrimination by the utility against any community. Elsewhere in this discussion it is set forth that the Indiana utility act is based upon the rights of the individual patrons to demand equitable rates and adequate service in their several communities. The Constitution of Indiana and the Constitution of the United States are bottomed upon the preservation of the rights of the individual.

The utility is familiar with its own rates, practices, and service. It can not lawfully escape the duty to guard against discrimination of any kind. The method announced above does not even discourage the utility from eliminating or eradicating discrimination in every form. (State ex rel. St. Louis Water Co. v. Public Service Commission, 316 Mo. 842, P.U.R.1927C, 473, 291 S. W. 788.)

Discussion of Evidences of Value.

[4] Present value of the property is the value upon which the rates and charges must yield fair return. Fair value and present value are interchangeable terms when used in a rate case. The value found must be fair and it must be the value at the time of inquiry. It must reflect proper deductions from the history of the utility and service rendered by it; also it must reflect a glance into the future both as to prospect of increase or decrease in the volume of patronage, as well as the profits or losses that may result therefrom. Rates are not made for today only, but for a reasonable period of years. Fair value and fair rates must be compatible with each other.

[5] In determining fair value, no single evidence of value may control. Cost to reproduce new is important evidence of value, but is not the sole evidence of value. Historic cost is important evidence of value, but is not the sole evidence of value. Representations made by the utility to other public bodies that deal with value deserve consideration as throwing light upon evidences of value urged upon this Commission.

If the Commission be convinced that unit costs used in appraisals are "loaded," this fact should be considered in the light of the record. If the Commission be convinced that representa-

tion made to the Board of State Tax Commissioners to press down unduly the tax base, that should be considered. If the Commission be convinced that the book cost is unduly low or unduly high, that fact should be considered. All evidences of value must be considered, each according to its degree of importance in determining fair value.

If the property is depreciated, that fact must be considered. If the property has appreciated, that fact must be considered. If the service to patrons is below adequacy, the rate of return must be fair to patrons; if the service is adequate, equal consideration must be given to that fact.

In other words, in a rate case, fair value must mean that the property will yield a fair return to its operators and will not require the patrons to pay more than a fair price for the service rendered them. The fairness must extend to those rendering service and to those receiving service.

On the basis of January, 1927, prices, inventory as of April 1, 1927, the engineering department of this Commission estimated the cost to reproduce new the electric property used in local service at Martinsville and vicinity at ..... $ 93,476.00
Same, depreciated at 72,157.00
Same, estimated original cost 89,169.00

(Above estimates to reproduce new include allowance of 15 per cent for construction overhead expense.)

The respondent's engineers made corresponding estimate of cost to reproduce new, as of September 1, 1927, the property used in Martinsville at $102,285.00
Same depreciated 88,721.00

(See respondent's Exhibit D.)

Respondent's Exhibit C showed additions and betterments to Martinsville local plant completed from April 1, 1927, to November 30, 1927, to be $4,116.36
During the same period, paid on open work in progress 2,583.39

$6,699.75

The purpose of this part of this exhibit was to bring down to November 30, 1927, the appraisal made by the Commission's engineers as of April 1, 1927.

The same exhibit, by the same method, showed that there should be added to respondent's appraisal of the same property $4,116.09 to bring same down from September 1, 1927, to November 30, 1927.

These additions would increase the Commission's engineers' appraisals as follows:—

Estimated cost to reproduce new	$100,175.75
Same depreciated	78,856.75
Estimated original cost	95,868.75
Respondent's estimated cost to reproduce new	106,401.09
Same depreciated	92,837.09

In Cause No. 6413 before this Commission, approved April 27, 1923, P.U.R.1923E, 57, a value of $120,000 was fixed upon this property. Said value included:—

Stand-by plant	$60,000.00
Working capital	6,000.00
Going value	8,000.00
Total	$74,000.00

Including said standby plant, the value of the depreciable property was declared, in the same order, to be $101,000; value of the "constantly used property" was found in that order to be $46,000.

What is known as stand-by plant, in said order, is now known principally as power plant. In 1923 it was supposed to be necessary and to be used to generate current at time when the transmission line then supplying current would fail to serve. In the instant case such portions of the stand-by plant of 1923 as is not used in local service is declared to be used as a part of respondent's general power system. This power plant was improved speedily and wonderfully after the petition was filed in the instant case. Its operation as a part of the power system, up to such time, was of questionable value.

In the 1923 order (No. 6413, *supra,* P.U.R.1923E, at p. 59) the book value (exclusive of $55,060.22 carried on the books as going value) was found to be $131,098.16. Concerning this the Commission's order said:—"There is no evidence before the

Commission that the actual amount of investment is truly reflected by the book value." This remark seemed to be intended to carry especial significance. Evidently the company then owning the property was content because it accepted a total value for its physical property of approximately $25,000 less than shown by the utility's books.

The history of this property suggests close scrutiny of values.

Transcript, page 524. Witness Charles W. Spooner, utility's appraisal engineer. Question by counsel for petitioner concerning generating plant in Martinsville as part of respondent's total power system:

Q. Don't you think that from what knowledge you have that this local generating plant should be amortized out of the capital account gradually?

A. I think they will be faced with that condition before very long.

Further answer by the same witness disclosed that said generating plant was included in his appraisal (Respondent's Exhibit D–1) at $84,000, which corresponds with the figure of $46,829 in appraisal by the Commission engineers.

In view of and in connection with this difference in depreciated appraisal of the Martinsville power plant, the witness testified that he gave the power plant at Clinton 87 per cent condition; the power plant at Sullivan 80.6 per cent condition; at Spencer, 76 per cent condition.

Witness stated that he gave the Martinsville power plant 83½ per cent condition, while the Commission's engineers gave it 45 per cent condition. Other testimony in the record indicated that the company has improved the condition per cent of this power plant after it was appraised by the Commission's engineers. However, the evidence did not warrant the conclusion that the gap between the two per cent condition had been closed by such improvements, or even nearly closed. Mr. Spooner's per cent condition of all this property, therefore, seems to deserve close scrutiny.

Witness Spooner, testifying as to the cost of poles, stated that in some instances the cost of poles was higher in his ap-

praisal, in some instances higher in the Commission engineers' appraisal; that in most instances the cost of poles in place was higher in his appraisal than in the Commission engineers' appraisal, due to the fact that the witness added to the cost of material 4.56 per cent, to the cost of labor 17.85 per cent, while the Commission engineers included such items as part of their 15 per cent overhead costs. The figures testified to above, by this witness, were in addition to witness' own general allowance for overhead costs.

The per cent added to material and labor costs by this witness in his appraisal, therefore, is 22.41 per cent in addition to his general per cent allowance for construction overheads, as compared with the Commission engineers' 15 per cent.

Mr. Spooner's testimony disclosed the following contrasts between his appraisal of poles in place in transmission lines in rural districts, similar poles in place in Martinsville and similar poles in place in Martinsville as estimated by Commission engineers:

	Spooner & Merrill		Commission Engineers
Kind of pole	Transmission Line	Town	Town
25 ft. 6 in.	$9.96	$8.62	$7.22
30 ft. 6 in.	13.68	11.93	9.14
30 ft. 7 in. (butt treated)	17.44	15.69	13.42
30 ft. 6 in. (western)	12.07	10.35	8.85

Generally speaking, pole prices and labor prices used by Spooner & Merrill were higher than the corresponding prices used by Commission engineers. Also, the overhead percentage added to both labor and materials was almost 50 per cent higher than the overhead percentage added by the Commission engineers. Also, the per cent condition of the property, generally, was higher than that found by the Commission engineers. The trend, throughout, was much higher in the appraisal by Spooner & Merrill than in the appraisal made by the Commission engineers. Reconciliation of these differences will compel the Commission to consider all obtainable evidences of value.

Both engineers had access to current prices of material, to current prices of labor, to soil conditions in the territory and to the effect of contract construction upon total costs.

Mortgage Contract and New Property.

[6] The respondent has given a mortgage upon its entire property. This mortgage requires the company to set up on the books from the earnings a reserve amounting to 12½ per cent of the gross revenues obtained from all sources except income from securities. Mr. Schiesz, treasurer of the company and witness, testified as follows: (Trans. pp. 643–644.)

"We are also entitled to make deductions for all expenses incurred in connection with retirement or replacement of property, and such losses as might be incurred in that connection. The sum of the current maintenance and the expense and losses in connection with replacement and retirement of property is then deducted from the figure computed on the basis of 12½ per cent of the gross revenues, and the balance remaining, if any, must be deposited with the trustee in the form of cash and the cash is actually deposited, if the report shows that there is a deficiency in expenditures. Following that step of depositing the cash, the mortgage, or the terms of Article V, or the provisions of Article V, state that the company is entitled to withdraw that money from the fund by one method of substituting fundable construction which has not been made the basis for certification of bonds."

In 1926, the total requirement under the 12½ per cent mortgage clause was $132,707; deposited with the trustee for that year, $24,035.01; 1925, total requirement, $135,643.93, deposited with trustee, $11,647.88. An exhibit prepared by this witness showed deposits in other years to be $56,891.63 for 1923; $7,827.58 for 1924; and that expenditures for maintenance and depreciation for 1927 exceeded the revenues from the 12½ per cent by $79,669.29.

The same exhibit showed the amount expended from this fund, before deposit with the mortgagee, to be $34,942.18 for 1923; $109,179.82 for 1924; $123,996.05 for 1925; $108,672.64 for 1926; and $236,675.87 for 1927, leaving a balance for the five years to be invested in new construction as $20,732.81.

It must be noted the expenditures from this fund in 1927 were more than $112,000 in excess of the expenditures for any other year; that the petition for rate reduction in this cause was

filed during the early part of the same year; and that the testimony of this witness warrants the statement that the above balances are invested in new construction.

It follows that the patrons have paid for this new construction and that the property so constructed is appraised for valuation as a rate base upon which the company expects to earn a return. Fair value of the property must take into consideration these facts.

The Commission believes the patrons should not be required to pay for utility property and pay a return upon the same property, without opportunity to participate in the return and in the management.

Depreciation.

Article V of the mortgage provides for the fund designated in the instrument "Maintenance, Depreciation and Improvement Fund." Article V recites:—"All expenditures made by the company during any of such years properly and ordinarily chargeable to maintenance and depreciation of its property shall be charged on the books of the company to maintenance and depreciation, and the aggregate amount so expended for maintenance and depreciation by the company in any such year shall be treated as a credit to the fund for such year."

It is apparent from the above that maintenance and depreciation charges are covered in the 12½ per cent provision of the mortgage. According to the terms of the mortgage these charges are to be made upon the company's books. Utility law and sound practice require such charges to be made as a part of the operating expense. Yet the company asks an allowance of 4 per cent per annum on the depreciable property for depreciation purposes in addition to the 12½ per cent requirement. The request seems to be for a double allowance for depreciation. Since the patrons must pay this, it is the Commission's duty to determine whether proper depreciation charges are covered in the 12½ per cent fund required by the mortgage.

Working Capital Allowance.

[7] The company seeks an allowance for working capital, the

amount so allowed to be a part of the rate base upon which the company should earn a return. Such allowance will not be made in this cause for the reasons given below.

In Cause No. 7018, approved by this Commission June 26, 1923, in which the Wabash Valley Electric Company was petitioner and in which it was granted "authority to issue bonds and stock to refund its obligations and to acquire the properties of other public utilities," the Commission granted such authority in paragraphs designated in said order as "A," "B," "C," "D" and "E" and other paragraphs. Paragraph E of said order reads:

"$25,000 par value of its 7 per cent preferred stock and $110,000 par value of its common stock to be sold for cash at not less than 90 per cent of par to provide working capital for the property of petitioner and the properties to be acquired by it."

The above paragraph appeared in the order by which the Wabash Valley Electric Company was authorized to acquire the property of the Martinsville Gas & Electric Company, which is the property involved in the instant case.

Another paragraph of the order in Cause No. 7018 reads:

"It is *further ordered* that on or before August 1, 1923, petitioner shall make report in writing to the Commission, showing therein the securities authorized herein that had been issued, sold, or exchanged, and the property and cash received therefor, and also showing therein the consummation of the purchase of the properties which petitioner herein asks authority to purchase."

On or about July 28, 1923, the Wabash Valley Electric Company made report to the Commission as required by the last preceding paragraph. This report was executed on the 24th day of July, 1923, and was sworn to by H. R. Ellis and Marshall V. Robb, the former being a vice president and the latter secretary of the Wabash Valley Electric Company at that time. In this report of stocks and securities sold it is stated that "the proceeds thereof were used for the purposes specified in said Certificate of Authority, and for no other purpose."

The last paragraph in the body of said report reads as follows:

"$25,000 of preferred stock and $110,000 of common stock sold at par, the proceeds to be used as working capital."

It appears, therefore, by virtue of authority granted by this Commission, working capital for the entire Wabash Valley Electric System has been provided by the issue of preferred stock and common stock after public hearing; that the Martinsville Electric Company is a part of the system for which said preferred stock and common stock were sold to provide working capital.

In the appraisal made by the Public Service Commission's engineers is included the sum of $6,566 for materials and supplies which is a part of the working capital of the utility and which is included for the Martinsville property only. It would be obviously unfair for the Commission to grant in the instant case further allowance for working capital, because it would be a duplication of working capital now included in the appraisal of the Martinsville property.

Unit Cost of Energy Delivered.

With respect to the income account, there is a sharp difference of opinion between petitioner and the respondents as to the power cost properly assessable against the consumers at Martinsville. The respondents assert a power cost of $59,037.10, and the petitioners that that power cost should be entered in the income account at $30,469.50. This difference is a result of different methods of arriving at the unit power cost.

Under the respondents' methods, the sum of approximately $59,000 is arrived at by multiplying the number of kilowatt hours used in Martinsville for the twelve months' period under consideration by a unit cost of $.027 plus per kilowatt hour. The total power cost, according to the petitioners, is arrived at by multiplying that same number of kilowatt hours by a unit cost of $.0139 plus. The difference between these calculations of power costs is so great that, obviously, the method of arriving at these unit costs is most important.

During the year ending July 31, 1927, the Wabash Valley Electric Company purchased and generated a total of 57,549,193 kilowatt hours. In that same period it sold a total of 51,457,770 kilowatt hours. The difference between those two figures was

accounted for by a line and transmission loss. In other words, during the year there was actually sold by the Wabash Valley Electric Company a little over 51,000,000 kilowatt hours at a cost, including power cost, operating expenses and taxes, of $719,175.91, or at a unit cost of $.0139 plus per kilowatt hours sold.

All of this electrical energy was sold out of the interconnected transmission system or pool of power known as the Wabash Valley Electric Company. Of the total kilowatt hours sold 21,335,114 kilowatt hours, or more than two-fifths of the total output, was sold to the Attica Electric Company and the Northern Indiana Power Company, and 31,122,656 kilowatt hours were sold to the so-called "gateways" of the Wabash Valley Electric Company, including Martinsville. The Wabash Valley, therefore, sold two-fifths of its total kilowatt hours in that year to allied companies, and three-fifths to the so-called "gateways" of the company, including Martinsville, at an average sale price per kilowatt hour of $.0139 plus. It would have been expected that, inasmuch as all the electrical energy comes from the same pool of power, the price to Martinsville for that power would be the same as the price to the Attica Electric Company, that is $.0139 plus per kilowatt hours. This is the method which the petitioners used in arriving at that power cost.

Page 7 of respondents' Exhibit A, introduced by Mr. Schiesz, treasurer of the respondent company, shows that the Wabash Valley Electric Company sold electrical energy to the two allied Insull Companies at a cost of $.0125 per kilowatt hour, and sold electrical energy out of the same pool of power to Martinsville for $.027 plus per kilowatt hour.

Under the respondents' method of calculation, electrical energy from a common pool was sold to allied utilities at less than the actual cost to the Wabash Valley Electric Company (selling company), and was sold to Martinsville and other towns in the system at substantially double the cost.

In calculating the sale price of electrical energy the Wabash Valley Electric Company charged against the so-called "gateways," including Martinsville, all of the depreciation and return that the Wabash Valley Electric Company was entitled to earn.

Respondent did not charge any of that depreciation and return against the two allied utilities, and also did not charge anything to meet operating cost and power cost. This was aside from the depreciation and return. In other words, under the respondents' method of allocating its cost, the various towns in the system, including Martinsville, which purchased only three-fifths of the total output of the Wabash Valley Electric Company, paid not only for the depreciation and return charged on the three-fifths of the property devoted to its use, but did pay the depreciation and return charged on the entire five-fifths of the property, thus allowing the two allied utilities to escape without paying any depreciation or return whatsoever. Not only were the towns of the system, such as Martinsville, penalized by paying the depreciation and return on the entire property, but were also penalized by paying some of the actual out-of-pocket power cost under the respondent's method of calculation.

To recapitulate, under the theory of respondent's exhibit, the total over-all cost of all the electrical energy which the Wabash Valley Electric Company sold during the year in question, including depreciation and return, was $.0139 per kilowatt hour. This electrical energy, which cost $0.139 per kilowatt hour, was sold to allied utility interests at $.0125, or under actual cost. The same electrical energy, coming out of the same interconnected transmission system and coming out of the same pool of power, was sold to the "gateways," including Martinsville, at $.027. Obviously, this method of calculation and allocation is unfair to Martinsville, and the power cost thus arrived at by respondents is too high.

The Commission believes, therefore, that the unit cost of power properly assessable against the city of Martinsville should be $.0139 plus, to which should be added fair return on the property used and useful to generate such current and deliver it to Martinsville.

Conclusions.

Having considered all matters presented in this cause and being thereby sufficiently advised, the Commission finds:

(1) The fair value of the property used and useful for serv-

ing the petitioners herein is $87,000, including going concern value and working capital, as of November 30, 1927.

(2) The fair rate of charge, by the general system of respondent to the city of Martinsville, for electrical energy furnished at the "gateway" of said city for service therein, is $.0172 per kilowatt hour, which charge includes production cost, depreciation, and return.

(3) The amount of working capital to which the electric property in Martinsville is entitled on account of its service to petitioners is exceeded by the amount of materials and supplies included in the appraisal of the Martinsville property. Therefore, no additional allowance should be made for working capital in this cause.

(4) Demand by respondent for allowance for depreciation is met, as shown by respondent's statement filed, by provision in Article V of mortgage on the utility property, in which 12½ per cent of certain gross revenues of the company is set aside to be used for maintenance, depreciation, and improvement. For this reason no additional allowance for depreciation should be made.

(5) Energy sold by respondent to other public utilities should be sold to them at no less price than is charged for energy furnished by said respondent to Martinsville at the "gateway."

[8] (6) The respondent should be permitted to put in effect a preliminary, optional rate for service, based upon the active room plan of rate schedule, and should be required to keep in effect such optional rate so long as such form of rate shall not be applied to the disadvantage of the patron, although the Commission may not now be in complete harmony with such form of preliminary, optional rate.

(7) The distribution system at Martinsville should be considered separately from the power system and the general system of distribution of respondent in this cause, both as a matter of convenience and accuracy of calculation, and to preserve to the patrons of the several communities the rights intended to be preserved for them by the Shively-Spencer Public Utility Act, amendments thereto and modifications thereof.

[9] (8) The Commission finds that the schedule of rates and charges set out below will be adequate to meet the requirements

of the company for rendering service to Martinsville and to yield a 7 per cent return on the fair value of the company's property.

(9) The price per kilowatt hour charged to Martinsville for energy furnished at the "gateway" should not be more than Martinsville's fair and equal proportion per kilowatt hour for all energy sold by the company's general system to all customers, including allied public utilities to which energy is sold.

(10) The Commission finds that the revenues of the respondent at Martinsville should be reduced not less than $25,000 per year, said reduction to be based upon the total revenues shown by respondent for the year ending July 31, 1927.

[10] (11) The Commission finds that the respondent should set up in a depreciation fund, as required by law (Acts 1925, Chap. 64, p. 210), a sum not to exceed 4 per cent per annum of the depreciable property used and useful in Martinsville; that said sum should be taken from the proceeds accruing from the 12½ per cent clause in the mortgage; that said sum should be used for depreciation purposes only, consistent with the mortgage contract, but not inconsistent with the law; that the proceeds thus acquired used in temporary construction should not remain so invested for a period longer than twelve months; that the permanent investment of such funds in construction of property should be forbidden. [Order omitted.]

Harmon and McIntosh, Commissioners, concur. Mr. McCardle and Ellis, Commissioners, not voting.

WISCONSIN RAILROAD COMMISSION.

RE WAUWATOSA MUNICIPAL WATER WORKS.

[U-3771.]

Rates — Service charge — Temporary service.

Fixed expenses making up the service charge do not necessarily cease with temporary cessations in the use of service, and under such circumstances no allowance should be made for temporary vacancy of

premises, or for the fact that the customer may have used service for part of a billing period only.

[January 23, 1929.]

APPLICATION of a municipal water company for authority to increase rates; granted.

By the **Commission**: Application was filed October 23, 1928 by the Wauwatosa Water Works for authority to increase rates for public and private fire protection service. The application was modified to include the legalization of the charge of 12 cents per 100 cubic feet for water sold to customers connected to the water main owned by the county of Milwaukee and for an interpretation of the application of the service charge per quarter.

Hearing was held at Madison November 15, 1928. A. W. Hebbring, Superintendent, appeared on behalf of applicant. There were no appearances in opposition.

As no charges had previously been filed by applicant covering private fire protection service, the proposed charges of $25 per year for a 4-inch connection and $50 per year for a 6-inch connection constitute an increase of rates to those customers formerly receiving this service free. It is proposed to increase the charge to the city for public fire protection service from $3,000 to $18,000 per annum.

An analysis of the cost of supplying fire protection service indicates that the proposed charge to the city is reasonable and may be approved. The cost of supplying service to customers who have installed sprinkler systems, private hydrants, or stand pipes that are connected continuously to the system, will under certain conditions exceed the charges proposed. However, where the customer is required to pay for the connection, so that the utility's investment in equipment necessary to supply this class of customers is practically the same as that required to supply general service, the annual charge for such stand-by service need cover only the capacity or demand costs which the utility incurs in keeping water available under pressure ready to supply the customers' requirements at any time. The charges proposed appear reasonable and will be approved.

Examining the expense items incurred by a water utility in conducting its business, it is at once apparent that they differ very much in character, and an analysis will warrant the division of the rate into a service charge and an output charge. The Commission has pointed out in many of its decisions these differences; hence, we need only summarize the conclusions at this time.

Every customer is responsible for certain operating expenses and for a certain demand upon the plant as he exercises complete control of the service. Even if for considerable periods his demand is nothing, if his premises are still connected to the mains of the utility, the fact that the latter must carry his account on the books and be ready at all times to supply the service up to his maximum capacity would necessarily imply that, if costs are equitably apportioned, he will have to carry certain "capacity" and "consumer" expenses.

In the case of the Wauwatosa Water Department the service charge requested by the department was placed at only $2 per year, an amount which covers but little more than the "consumer" costs usually included in the service charge. This consumer cost is made up of the expense of the meter department (testing, labor and supplies, removing and resetting, maintenance, etc.); customer's premises expenses (attention to complaints or to improving the character of the service); commercial expenses (labor of bookkeepers employed on consumers accounts, meter reading, billing, labor and supplies, collecting) etc.

The consumer and a part, at least, of the capacity expenses usually making up the service charge do not cease with temporary cessations in the use of water and hence the larger portion thereof is not proratable for portions of the accounting period. A service charge of the proportions of the charge here under consideration may be properly treated as a fixed charge, with no allowance for the temporary vacancy of the premises, or for the fact that the customer may have used water for part of a billing period, only.

Premises which shall remain entirely vacant and use no water whatsoever for one or more full quarters should be considered as permanently vacant during such complete quarters and no service charge should be applied therefor.

WISCONSIN RAILROAD COMMISSION.

RE ST. CROIX VALLEY TELEPHONE COMPANY.

[U-3748.]

Return — Operating expenses — Payment to holding company.

1. Payment to a parent or holding company will be allowed as an operating expense of the subsidiary only where the charges for holding company service are such as can be substantiated by evidence of cost to the holding company for rendering such service, p. 599.

Rates — Initiation of rates — General fair value.

2. Where proposed rates will not result in more than a fair return to the utility, there is no reason why they should not be allowed unless the structure of the schedule is such that it will result in unfair discrimination against a certain class or classes of subscribers, p. 600.

Commissions — Jurisdiction — Boundaries of the state.

3. Where a proposed application for a rate increase applies for service in a neighboring state as well as the state in which the Commission is sitting, the approval of the Commission will not apply to those rates which are beyond the boundaries of the state, p. 600.

[January 25, 1929.]

APPLICATION of a telephone company for increased rates; granted.

By the **Commission**: Application in this case was filed with the Commission on July 13, 1928. Petitioner, the St. Croix Valley Telephone Company contends that the present rates do not afford sufficient revenues to meet the operating expenses, allow a reasonable amount for depreciation, and provide a fair return upon a fair value of the property used and useful in furnishing the telephone service.

Hearing in this case was held September 7, 1928, at St. Croix Falls. Appearances were as follows: L. T. Olcott, Secretary and Manager, St. Croix Valley Telephone Company; E. Blaine Heimbach, Engineer, American Appraisal Company, Milwaukee, for the applicant; E. Nelton, Attorney, Balsam Lake, appearing for the users of the line at Centuria and Balsam Lake, for the respondents.

The present and proposed net rates of the utility are as follows:

St. Croix Falls, Wis., and Taylor Falls, Minn., Local	Present	Proposed
Business, one party	$2.50	$3.50
Business, two party	2.25	3.00
Business, extension	1.00	1.00
Residence, one party	1.50	2.00
Residence, four party	1.25	1.75
Residence, extension	.50	.50
Centuria, Wis., Local (Automatic)		
Business, one party	2.50	3.50
Business, two party	2.25	3.00
Business, extension	1.00	1.00
Residence, one party	1.75	2.00
Residence, four party	1.50	1.75
Residence, extension	.50	—
St. Croix Falls, Wis., Rural		
Business, metallic	2.00	2.50
Business, grounded	1.50	1.50
Residence, metallic	1.50	1.75
Residence, grounded	1.25	1.25
Taylor Falls, Minn., Rural		
Business, metallic	2.00	2.25
Residence, metallic	1.25	1.50
Residence, grounded	1.25	1.50
Centuria, Wis., Rural		
Residence, metallic	1.50	1.75

Local bills payable monthly in advance.
Discount allowed if paid before the 15th of the month. Rural bills paid quarterly in advance. Discount of 75¢ allowed if paid before the 15th of second month of the current quarter.

No change is contemplated in following service connection and move charges:

Service connection charge (Refunded after 2 years' continuous telephone service)	$3.50
Inside move	2.00
Outside move	2.50
Change in type of equipment	2.00

Other changes proposed are the following:

An additional charge of 25c per month for rural residence desk telephone.

Excess radius charge—St. Croix Falls Local—On one party business and one party residence service additional monthly charge of 25c for each ¼ mile beyond ½ mile radius from central office. Proposed change in this rule provides a 25c charge for each ½ mile beyond primary zone.

The company submitted in connection with this case an appraisal report made by the American Appraisal Company show-

ing a cost of reproduction valuation as of May 1, 1928 amounting to $154,977.39 and a cost of reproduction new less depreciation value of $139,076.34. The property and plant value reported by the utility in its 1927 report showed a valuation of $84,658.33 as of December 31, 1927. As will be shown later, the Commission is not required in this case to pass upon the valuation found by the American Appraisal Company. The Commission is convinced that the fair value would amount to something over $100,000 after giving proper recognition to materials and supplies and going value. How much it may be in excess of that amount we need not determine.

Exhibit 4, which the company submitted at the hearing, is a table indicating the number of telephone subscribers in each class of service and the present and proposed rates for each class. According to this table the additional annual revenue which the utility might expect under the proposed rates would amount to approximately $3,708. The revenues reported for 1927 amounted to $22,387.79 which together with the additional revenue under the proposed rates would give the utility gross operating revenues of approximately $26,100.

[1] Operating expenses for the year 1927 amounted to $15,-134.88 before depreciation and return. Included in this amount is $1,200 which was paid the holding company for services rendered. In several cases the Commission has taken the attitude that it would allow as operating expenses of the subsidiary only such charges for holding company service as could be substantiated by evidence of cost to the holding company for rendering such service. No testimony has been offered to substantiate the claims of the subsidiary in this respect and for the purposes of this case the $1,200 payment will not be allowed as operating expense.

Normal operating expense as reflected in the 1927 report and adjusted to eliminate payment to the holding company will, therefore, approximate $14,000, leaving a balance of $12,100 for depreciation and return. This balance would provide, on a valuation of $100,000, 12.1 per cent for depreciation and return. The fair value of this property has been found to be something over

$100,000 and the above net revenue, therefore, will not be more than a reasonable return on the fair value.

[2] Since the proposed rates will not result in more than a fair return to the utility there is no reason why they should not be allowed unless the structure of the schedule is such that it results in an unfair discrimination against a certain class or classes of subscribers. A study of the schedules, in so far, as they apply to Wisconsin territory indicates that they have been designed in accordance with common practice and no evidence of discrimination appears.

[3] It will be noted that the application, as filed with this Commission, includes schedules of rates to apply in the state of Minnesota as well as Wisconsin. The jurisdiction of this Commission is limited to the boundaries of the state of Wisconsin and this order, therefore, is concerned only with rate schedules to apply to service in the state of Wisconsin.

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION.

RE POTOMAC ELECTRIC POWER COMPANY.

[Formal Case No. 203, Order No. 748.]

Service — Submetering of electricity — Regulations prohibiting.

1. A regulation designed to limit the purchase of electric energy to the customer's own use and thereby preventing the submetering of electric energy to tenants of a building is reasonable, p. 601.

Rates — Powers of Commission — Prohibition against submetering.

2. An order approving a provision in a rate schedule requiring that the applicant or consumer agree that the service purchased is for his own use and not to be remetered for sale to others is within the power of the Commission to fix rates based on the purpose for which the service is purchased, and to approve the terms and conditions under which it is sold by the utilities, p. 603.

Discrimination — Prohibition against submetering service.

3. An order approving a regulation which prohibits the submetering of electric current for resale by a consumer does not result in discrimination because an owner of a building is permitted to buy electricity for the entire building provided he does not remeter such electricity for sale to tenants, p. 604.

P.U.R.1929B.

Service — Submetering electric current — Rights of tenants.

4. Tenants of a building have the right to purchase electricity directly from a public utility instead of having it submetered by the landlord, p. 604.

[February 28, 1929.]

INVESTIGATION of the practice of submetering electric energy; case closed with observation that subject matter had been sufficiently disposed of by previous order.

By the **Commission:** After due notice to all interested parties a hearing was held on December 12, 13, 17, and 18, 1928 to consider whether the practice of submetering electric energy should be discontinued.

The Adams Building Trust, James L. Karrick, Washington Convention Hall Building, Washington Arcade Company, Joseph H. Himes Company, and Joseph J. Moebs entered protests against this Commission interfering in any way with the practice of submetering electric current.

Mrs. Augusta W. Bispham, Mrs. Sophie W. Coolidge, and Mrs. Lavinia D. Hoff, and the people's counsel protested against the continuance of the practice.

[1] This Commission finds from the evidence that it has been the practice of a number of building owners in the District of Columbia to purchase electric energy for their use and for the use of tenants and to sell a part of such energy to their tenants on a measured basis at rates which yield a profit to the building owners. While many of the building owners state that their policy has been to follow the rate schedules adopted by this Commission, in some instances the rates at which such energy has been sold have been higher, and in some lower, than the rates at which the individual tenants could purchase the current from the Potomac Electric Power Company. The wires, meters, and other appliances used by said building owners in furnishing energy to their tenants are their own property, the meters having been purchased in some instances through the Potomac Electric Power Company and/or at the solicitation of agents of that company.

That the current purchased and resold has in some cases (apartment houses) been purchased under schedules intended

for commercial purposes only but on resale has been used for residential lighting.

That some building owners have ceased the generation of current for sale to tenants and have purchased current from the Potomac Electric Power Company for that purpose, but propose to resume the generation of current if they are not permitted to resell current which they so purchase.

That efforts have been made by a New York corporation to enter into arrangements with building owners whereby the current required by the buildings would be purchased from the Potomac Electric Power Company through a master meter and then, through submeters furnished, serviced, and read by the said New York corporation, current would be resold to tenants at higher rates and the profits arising therefrom would be divided between the building owner and the said New York corporation.

The Commission is of the opinion that it was the intent of Congress in passing the act creating this Commission (37 Stats. 974) that rates aand schedules should be prescribed and regulations for their use adopted to the end that all persons similarly situated should receive the same treatment.

Rates and schedules have been fixed for electric service for various uses. For example, Schedule "A" rates apply to any residential use, Schedule "K" rates apply to any residential use other than lighting, Schedule "B" rates apply to any commercial use other than lighting, etc.

The Potomac Electric Power Company, the only known "electrical corporation" operating in the District of Columbia, submitted for approval by this Commission a regulation under the heading "General Terms and Conditions" in its Schedule of Rates for 1929 requiring prospective customers to agree that the electric service to be furnished is for their own use and not to be remetered for sale to others. This regulation was approved in Order No. 737, dated December 31, 1928, and reads as follows:

"1. The consumer agrees not to use the current for any purpose or for any additional equipment other than that provided for in this contract without first having notified the company in writing and having received the company's consent thereto. It is expressly understood and agreed that electric service fur-

nished to the consumer shall be for his (her or their) own use and may not be remetered (or submetered) by the consumer for the purpose of selling electric service to another or others."

A regulation designed to limit the purchase of electric energy to the customer's own use appears to be reasonable as it would have the effect of confining the use to that for which the schedule under which the current is purchased was intended.

This Commission takes notice of the decree of the supreme court of the District of Columbia in Potomac Electric Power Company v. Public Utilities Commission, Equity No. 35,336 and 35,341 in which the court approved an agreement between the parties to the case by which, if the rates for electric energy yield a return in excess of 7½ per cent on the rate base, determined as provided in said agreement, then one-half of the excess over 7½ per cent shall be used in a reduction of rates to be charged the public thereafter. Provisions are also made for increases where the return falls below certain percentages.

Under this agreement prompt reductions in rates have been made each year since 1924. It can hardly be questioned that the net revenues of any year (which determine the rates for the following year) would be affected by the fact of whether the current is sold to the ultimate consumer at rates which are proper for him to pay or is sold to a middleman at rates which may or may not apply to the ultimate consumer to whom he sells. The question of whether submetering for sale shall continue is, therefore, clearly affected with a public interest.

[2] It was argued by those who desire to continue the practice that this Commission has no jurisdiction and, therefore, has no right to interfere with them in doing as they please with current they have purchased. Others argued against this position, but the Commission does not feel that it is necessary to decide this issue. The Commission has, unquestionably, the power to fix rates based on the purpose for which the service is purchased, and to approve the terms and conditions under which it is sold by the utilities.

An order approving a provision under "General Terms and Conditions" requiring that the applicant or consumer agree that the service purchased is for his own use and not to be remetered

for sale to others does not deprive anyone of service, but merely prescribes the terms and conditions under which he may get the service required by him.

[3, 4] Suggestion has been made that the proposed order would result in discrimination because it would permit an owner of a building to buy electricity for the entire building provided he does not remeter such electricity for sale to tenants, but would prevent his neighbor from buying electricity for a similar building and selling the electricity required by the tenants on a metered basis. We do not see such discrimination. In either case the owner may buy electricity required by him for furnishing his tenants lighted and electrically equipped rooms, stores, or apartments provided it is purchased under the proper schedule according to use. It is no discrimination to say that building owners may purchase current to enable them to rent electrically serviced space, but that if they wish to rent space not so serviced, the public utility cannot sell them such service where it is intended by the owners to resell it to their tenants. The tenants, in such cases, have the right to purchase direct from the utility.

The Commission is of the opinion that the subject matter of this case is sufficiently disposed of by its Order No. 737, approving the Potomac Electric Power Company's rate schedule for 1929.

It is, therefore, *ordered:*

(1) That Formal Case No. 203 be and the same is hereby closed.

MISSOURI PUBLIC SERVICE COMMISSION.

RE NORTH CENTRAL TELEPHONE COMPANY et al.

[Case No. 6205.]

Consolidation, merger, and sale — Intercorporate relations — Speculation.

1. There is no justification for a utility owner to purchase property and sell it to the company he owns or controls at a profit to himself, in view of the fact that public utilities are granted virtual monopolies and are not intended, nor should they be permitted, to be made the basis of speculative profits, p. 609.

P.U.R.1929B.

Consolidation, merger, and sale — Intercorporate relations.

2. The fact that the majority holders of stock are anxious to acquire property personally owned by the minority interests is no reason why the operating company should be made to bear the burden of a purchase price in excess of the actual value of the property, p. 609.

Evidence — Unsworn testimony — Valuation appraisal.

3. An appraisal of the value of utility property by an engineer which is uncertified and unsupported by any sworn testimony, is of no probative value but may be considered and discussed by the Commission for purposes of comparison, p. 609.

Security issues — Value of property.

4. The Commission will not approve of the issuance of stock on utility property, the amount of which is obviously in excess of the real value of the same, p. 611.

Consolidation, merger, and sale — Right to sell.

5. The owner of public utility properties is undoubtedly entitled to sell them for whatsoever they will bring provided the public be not injured thereby, and the Commission will not deprive such owners of any benefits of sale contract, the performance of which will not be detrimental to public interest, p. 611.

[February 23, 1929.]

APPLICATION of a telephone company for permission to do business and to buy certain utility properties and issue securities for the same; application denied.

I.

By the **Commission:** This case is before the Commission upon joint application of North Central Telephone Company (a recently organized Missouri telephone corporation), D. C. Myers of Green City, Missouri, Millard F. Cheek of Kansas City, Missouri, and Municipal Utility Investment Company, a Missouri corporation with principal offices at Kansas City, Missouri, for an order authorizing,

(a) D. C. Myers and Millard F. Cheek to sell and North Central Telephone Company to purchase and operate local telephone exchange properties located at Green City, Green Castle, Harris, Newtown, Lucerne, Pollock, and Boynton in Sullivan and Putnam counties, Missouri.

(b) North Central Telephone Company to issue and sell to Municipal Utility Investment Company for $10,000 in cash, 500 shares without nominal or par value of its common capital stock, and

(c) Municipal Utility Investment Company for permission and authority to purchase, take, and hold, 500 shares without nominal or par value of common capital stock of North Central Telephone Company.

A hearing upon the said application was held before the Commission at its offices in Jefferson City on the 23rd day of January, 1929, after due notice thereof had been given to all parties at interest. The applicants were represented at the said hearing by their attorneys, Mr. H. L. Moore and Mr. John W. Moore of Excelsior Springs, Missouri, but no other parties were present or represented.

II.

The evidence in this case shows that the seven telephone exchange properties hereinbefore enumerated have for some time been owned and operated by Mr. D. C. Myers of Green City, Missouri. They are small properties serving a total of 1472 subscribers of which 679 stations are classified as "switching stations," that is, the switching subscribers, who are located in rural territory, own all the equipment (instruments and lines) up to the connections with the exchange lines. A total of 354 subscribers own their telephone instruments but no other property or equipment, and with respect to the remaining 439 subscribers, Mr. Myers owns the telephone instruments and all other equipment. The largest exchange is the one at Green City, where a total of 494 subscribers are served, of which 230 are switching subscribers and 85 subscribers own their instruments. According to the testimony of one of applicant's witnesses, the properties, at least those parts thereof located within the towns, are in poor physical condition.

The first negotiations for the purchase of these properties were conducted by Millard F. Cheek, who on October 19, 1928 made a contract with D. C. Myers for the purchase and sale thereof for a consideration of $70,000, of which $35,000 was to be paid in cash on various dates and $35,000 in 1-year 6-per cent notes secured by the property. Thereafter, to-wit, on November 19, 1928, Cheek and certain of his associates, viz., H. L. Moore, John W. Moore, H. L. Housley, and Fred D. Urfer, caused the incor-

poration of North Central Telephone Company, following which Cheek, on November 30, 1928, made a contract with the North Central Telephone Company, wherein for a cash consideration of $10,000, he agreed to assign to the said company his rights to purchase the said properties. It will thus be seen that the cost to the North Central Telephone Company to acquire the properties will be $80,000, and that Cheek will make a profit of $10,000 upon his contract.

In order to finance the acquisition of the properties the North Central Telephone Company proposes to issue and sell to Municipal Utility Investment Company for a cash consideration of $10,000, 500 shares without nominal or par value of its common capital stock, also $35,000 principal amount of 1-year 6-per cent notes at par, and in addition it proposes to issue to D. C. Myers $35,000 of 1-year 6-per cent notes in accordance with the contract of October 19, 1928. The cash proceeds from the sale of the stock and notes to Municipal Utility Investment Company amounting to $45,000 will be used (1) to make the $10,000 payment to Cheek called for in his contract, and (2) to make the $35,000 cash payment to Myers provided for in the contract of October 19, 1928.

The outstanding stocks and obligations of North Central Telephone Company, proposed to be issued upon acquisition of the properties will, therefore, consist of the following:

Common stock—500 shares no par value	$10,000.00
Notes—one year, 6 per cent	70,000.00
Total	$80,000.00

The Municipal Utility Investment Company (the proposed holding company) is a Missouri corporation which, up to this time, appears to have dealt exclusively in the financing of other utilities and in trading in securities of other utilities, although it is stated by one of applicant's witnesses that it is now negotiating for the acquisition of telephone properties in other states. Its net worth at December 31, 1928 is shown by its balance sheet to be $135,409.02, but of its total assets $121,255 is represented by an item described as "stock investments." Such stock investments are explained as being investments in preferred and com-

mon stocks of other telephone utilities, but the methods used in valuing the said stocks are not clearly defined.

The said Municipal Utility Investment Company was incorporated August 29, 1928, with 242 shares of common stock which were subscribed and are now owned by the following parties: Millard F. Cheek, 100 shares; H. L. Moore, 100 shares; J. W. Moore, 13 shares; H. L. Housley, 13 shares; Miscellaneous (6 in number) 16 shares; total 242 shares.

As evidence of the value of the properties to be transferred the applicants have submitted in evidence an appraisal thereof made by Hugh R. Carter, a civil engineer of Little Rock, Arkansas, which said appraisal in summarized form is as follows:

	Reproduction Cost	Present Value (Reproduction Cost Less Depreciation)
Physical property, including construction overheads and interest during construction	$90,987.13	$79,466.23
Material and supplies	2,231.88	2,231.88
Cash working capital	2,850.00	2,850.00
Cost of establishing business, 15%	13,648.04	13,648.04
Cost of financing, 10%	9,098.70	9,098.70
Going value, 20%	18,197.41	18,197.41
Totals	$137,013.16	$125,492.26

No witnesses appeared at the hearing of January 23, 1929 to testify concerning this appraisal.

III.

The first question to be considered in this case is the purchase price of the property, including the $10,000 profit to Millard F. Cheek in the transaction.

From the evidence herein it appears that Cheek owns 41 per cent of the common stock of the Municipal Utility Investment Company, and that he owned such stock prior to his negotiations with D. C. Myers for the purchase of these properties. The said Municipal Utility Investment Company in turn, under the proposed arrangements, will own all of the common stock of the North Central Telephone Company, from which it is clear that Cheek, through his holdings in the Municipal Utility Investment Company will have a 41-per cent interest in the net assets of North Central Telephone Company. And Cheek now proposes

to sell property, which, acting in his individual capacity, he contracted to purchase for $70,000, to a utility company in which he owns or will own a 41-per cent interest, at a profit to himself of $10,000.

[1–3] What justification is there for a utility owner to purchase property and sell it to the company he owns at a profit to himself?

Public utilities are granted virtual monopolies and are not intended nor should they be permitted to be made the basis of speculative profits. They are charged with the duty of rendering adequate service at rates reasonable, and commensurate with the service, and in return are entitled to fair returns upon the fair values of their properties, no more. And profits such as that herein proposed can actually be realized only through rates charged or securities sold to the public, all the more reason why they should be closely scrutinized and permitted only when shown to be absolutely necessary and justified beyond question.

It may be argued in this case that Cheek, by reason of the fact that he owns only a 41 per cent interest in the holding company, is entitled to compensation or preferred treatment from the holders of the remaining 59 per cent in return for the property he has acquired and is relinquishing to the consolidated interests, which, if true, is no reason why the operating company should be made to bear the burden. On the other hand it appears that any necessary adjustments could be made between the respective interests, through adjustment of stock equities, or otherwise.

Again it may be argued that Cheek, having purchased properties actually worth $80,000 or more for a consideration of $70,000, is entitled to the benefits of his bargain, and is justified in taking his profit, even though it be made at the expense of a company in which he has a substantial interest. For that reason the evidence herein pertaining to the value of the properties will be examined into.

Aside from some general testimony pertaining to the physical condition of the properties, the only evidence concerning property

values submitted by the parties consists of the inventory and appraisal made by engineer Hugh R. Carter, hereinbefore referred to. This said appraisal is uncertified and unsupported by any sworn testimony, and is, therefore, of no probative value, but a brief discussion thereof may be profitable.

Engineer Carter estimates the cost of reproduction new of the property, including construction overheads and interest during construction, to be the sum of $90,987.13 and the cost of reproduction new less depreciation, or as he terms it "present value" to be the sum of $79,466.23. After adding the value of materials and supplies on hand and an estimated requirement for cash working capital, he adds $40,944.15 for intangible values, which latter amount is equivalent to 45 per cent of the cost of reproduction new and 52 per cent of the cost of reproduction new, less depreciation of the property. By this process he arrives at a total cost of reproduction amounting to $137,013.16, and at his estimate of the present value amounting to $125,492.26.

The intangibles thus included are described as "Cost of Establishing Business, 15 Per Cent," "Cost of Financing, 10 Per Cent" and "Going Value, 20 Per Cent," of the estimated cost of reproduction new of the property.

Although this Commission has in the past had some few appraisals submitted to it containing estimates and allowances most liberal in amount, we do not recall any appraisal heretofore submitted with intangible allowances as large as these, and there is no evidence in this case justifying such intangible values.

Attention is further drawn to the fact that according to this engineer's calculations he has found the property to be in better than 87 per cent condition, which can hardly be reconciled with the testimony of applicant's principal witness, who testified that the property within the towns is in poor physical shape and is in need of rehabilitation.

The engineers of this Commission are continually engaged in making appraisals of utility property in this state and their files are replete with data pertaining to unit costs and per cent condition of telephone properties such as these. And upon application of these studies to the inventory herein submitted, the Commission

is of the opinion that the probable cost of reproduction new of the properties will not exceed $73,000, and that the probable cost of reproduction new less depreciation will not exceed the sum of $51,000.

If the sum of $51,000 should be accepted as the cost of reproduction new less depreciation of the properties, and a liberal allowance for going concern value be made, it appears in that event that the fair present value of these properties would not exceed the sum of $56,000.

This is not to be construed as the finding by the Commission of a value of $56,000 for the properties involved herein, but in view of the absence of convincing evidence pertaining to values, we are unable to accept any higher figure for the purposes of this case.

The Commission holds, in view of the evidence, that the $10,000 profit to Millard F. Cheek to be paid by North Central Telephone Company is wholly unjustified and it will not be approved.

[4] The Commission is also requested to approve the issuance and sale of common stock for $10,000, by a company which proposes to issue $70,000 in notes, which will rank ahead of the said stock. From this it will be seen that in order for the stock to have an actual equity of $10,000, a sound property value of $80,000 would perforce be necessary, but this has not been shown. The Commission, therefore, cannot at this time approve the issuance of the said stock.

[5] Mr. D. C. Myers, the seller of the properties, occupies the role of innocent bystander in this case; he undoubtedly is entitled to sell his properties for whatsoever they will bring, provided the public be not injured thereby. This Commission has no inclination to deprive him of any of the benefits of his contract, and were this an outright cash transaction with no detrimental effects upon rates or service, we would not say him nay.

But this is a joint application involving not only purchase and sale, but the payment of an apparently unjustified profit, and the issuance of securities in amounts not supported by the evidence. We are, therefore, of the opinion that the said joint ap-

plication should be denied, and an order will be issued accordingly.

Ing, Chairman, Calfee, Porter, and Hutchison, Commissioners, concur; Painter, Commissioner, absent.

MISSOURI PUBLIC SERVICE COMMISSION.

CITY OF UNIVERSITY CITY, MISSOURI

v.

WEST ST. LOUIS WATER & LIGHT COMPANY.

[Case No. 3578.]

WEST ST. LOUIS WATER & LIGHT COMPANY

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI.

[Case No. 3974.]

Valuation — Elements of fair value.

1. In determining fair value for rate-making purposes all relevant facts must be considered and there must be an honest and intelligent forecast as to probable price and wage levels during a reasonable period in the immediate future, p. 617.

Valuation — Cost of meters — Savings of good management.

2. It is unfair to water consumers to make them pay a return on an amount greater than the present cost of meters which is purely the result of the good management by the owners in pooling the purchases of such meters with an allied company, in view of the fact that a utility is allowed a monopoly in consideration of operating as economically and efficiently as possible, p. 619.

Valuation — Evidence of historical cost.

3. The best evidence of what such items as labor of placing mains will cost may be gathered from the experiences of contractors who actually perform such work in connection with the particular properties being valued, p. 619.

Valuation — Reproduction — Time of construction.

4. In determining the amount of interest during construction that

should be allowed in a reproduction estimate of a water utility the Commission reasoned that the company could build its plant and lay at least 41 miles of mains within a year in a densely populated section, and that any further time necessary to complete the plant would be on an operating basis, p. 620.

Valuation — Advances made by consumer.

5. The amount of advances made by consumers for distribution mains was deducted from the fair value of a water utility as found by the Commission, in order to obtain a value for rate-making purposes, p. 622.

Depreciation — Percentage allowed — Water.

6. A water utility was allowed 1½ per cent of its depreciable property as a depreciation requirement, in view of the contingency of wholesale retirement of property in event of a proposed change of operating methods, p. 622.

Return — Percentage allowed — Water.

7. The Commission was of the opinion that a 7 per cent return on the current fair value of a water utility was a proper allowance for rate-making purposes in view of the fair prospects of future business enjoyed by the company, p. 623.

[February 9, 1929.]

APPLICATION of a water utility for a rate adjustment; rates adjusted.

By the **Commission**: Case No. 3578 was brought before the Commission on March 8, 1923, on complaint of the city of University City, Missouri, of annual hydrant rental as charged the city by the West St. Louis Water & Light Company, predecessor of the St. Louis County Water Company, which is the present owner.

Case No. 3974 was brought before the Commission by said West St. Louis Water & Light Company, on May 2, 1924, by asking the Commission to make necessary appraisals, audits, and other investigations in order that the value of said company may be established and the Commission have all available information on which to decide any complaint relative to rates.

Subsequently the Commission's engineering and accounting departments made an appraisal of the property and audit of the books of the company as of December 31, 1925.

The cases herein being related were consolidated by the Commission and the record showing the St. Louis County Water

Company is the successor in interest, and owner of the property of the West St. Louis Water & Light Company, its appearance was entered in the matter and it was substituted for the West St. Louis Water & Light Company in the Consolidated cause herein.

Hearings were held at which time the Commission's engineers and accountants, and experts for the company and the city of University City introduced their appraisals, audits, and other information and testimony for the consideration of the Commission.

At the hearing of this cause on July 21, 1927, and subsequently, the company requested the Commission to include the net additions and betterments to the property for the two years after the date of the audit and appraisal as made by the various experts. The Commission's accountants subsequently made an audit of net additions to property for the period of January 1, 1926 to December 31, 1927.

On July 10, 1928, P.U.R.1928D, 322, the Commission issued its report and order in this cause and fixed the present fair value of the St. Louis County Water Company as of date December 31, 1927, considering said property as a going concern and considering all elements of value, tangible and intangible at the sum of $5,303,339 of which property not used and useful in the public service was valued at $18,339.

The matter of rates was not discussed in said report and order, nor was any finding of facts relative to rates made for the reason that the Commission had found it advisable to determine the revenues and expenses of the company for the years 1926 and 1927 and that the investigations leading to said determination were not then completed.

On July 19, 1928, the St. Louis County Water Company filed motion for rehearing in this cause, it being considered by said company that the Commission, in its report and order entered herein on the 10th day of July, 1928, *supra,* was unjust, unreasonable, and arbitrary; that it had not acted lawfully, and the results as set forth in said report and order were confiscatory and violative of the provisions of § 1, of Article 14 of the amend-

ments to the Constitution of the United States in the following respects:

That the Commission should have found a fair value of at least $7,045,611 as of date December 31, 1927, instead of a value of $5,303,339; that the Commission erred in deducting the sum of $405,000 from the value of the mains as found by its engineers because of a drop in the price of cast iron pipe; that the Commission should have used an average cost of cast iron pipe over a reasonable period of years; that the Commission erred in deducting $20,000 from the value of the company's meters; that the Commission erred in adopting one year as a reasonable construction period; that the Commission erred in finding a going value of $450,000; that such going value should not be less than $789,136; that the Commission erred in fixing the amount of general construction overhead costs at 12 per cent of the cost of the physical property; that the Commission erred in its finding of the actual cost of the property; and that the Commission erred in its determination of the reproduction cost of laying and constructing the distribution mains of the company.

On July 19, 1928, the city of University City filed a motion herein for rehearing on the grounds that the Commission gave too much weight to the cost of reproduction; that the Commission practically disregarded the original cost of the property; and that the Commission allowed an excessive amount for going value.

Further hearing was granted and held at the hearing room of the Commission on the 28th day of September, 1928, at which time further testimony was given and the audit of revenues and expenses as made by the Commission's accountants was introduced.

Briefs were submitted by the company and the city of University City, Missouri.

The Commission's accountants found charges in the profit and loss accounts that made it necessary to adjust the plant account total as reported in their last previous audit. The adjusted plant account as of date December 31, 1927, is the sum of $4,257,935.58 exclusive of material and supplies and cash working capital, and inclusive of land in the amount of $39,122.58 and construction overhead costs.

The amount in the depreciation reserve of the company was also adjusted by said accountants. The adjusted amount as of date December 31, 1927 is $442,205.15.

The results of operation for the years 1926 and 1927 as determined by the Commission's accountants are as follows: Net revenue available for depreciation and return, 1926, $499,244.39; 1927, $508,694.97.

The accountant's report shows the operating revenues and operating expenses of the company are increasing each year and note is made of increased salaries, taxes, and other expenses which will occur during the year 1928.

The accountant's report further shows that the company has on hand as of date December 31, 1927, the sum of $521,870.51 which has been advanced to the company by real estate promoters at the cost of distribution mains serving their properties. This amount is repaid by the company at the rate of $50 per new customer attached less a deduction of 1 per cent per annum for depreciation. No interest is paid by the company on such remaining sums.

Conclusions

The Commission does not think it necessary to repeat at this time the conclusions found and set forth in its report and order of July 10, 1928, P.U.R.1928D, 322. All of the points in question were fully discussed in said report but since additional testimony and evidence has been introduced and the entire issue is again before the Commission, the principle points of contention will again be touched.

The company contends the original cost as found by the Commission is too low. Commission's accountants found original cost as of date December 31, 1925, and Commission's engineers made an original cost appraisal as of the same date. To both were added the additions to the property from January 1, 1926, to December 31, 1927 as shown by the books of the company. Neither the company nor the city offered any evidence whatsoever as to the original cost of the property and the only contention made by the company was the introduction of testimony

that there were expenses chargeable to plant that do not appear on the books.

The company contends that the Commission should not have deducted $405,000 from the cost of cast iron pipe as determined by the engineers on December 31, 1925. The Commission's engineers used a base price for 6-inch Class "B" and heavier pipe of $45.60 f. o. b. St. Louis. The valuation date was moved to December 31, 1927, and the cost of 6-inch and larger Class "B" cast iron pipe was $32.60 per ton f. o. b. St. Louis as of date December 31, 1927. The testimony and records of the company show these prices were the ones paid by the company on the respective dates. The difference is $13 per ton. Four-inch cast iron pipe had a reduction of $14 per ton.

The distribution and transmission mains of the company comprise approximately 75 per cent of the physical property and the Commission was and is of the opinion that such a change in the cost of any item affecting such a large per cent of a property should be considered.

There was on December 31, 1927, approximately 51,500 tons of cast iron pipe in the property of this company.

Mr. Plake, the Commission's chief engineer, stated during the last hearing in this case that it is his opinion that a cost of reproduction appraisal as of a certain date should reflect the cost of materials and labor as of that date, but that the Commission, in determining the fair value of a property should recognize any apparent changes in costs that would affect fair value.

[1] In determining value, all relevant facts must be considered and there must be an honest and intelligent forecast as to probable price and wage levels during a reasonable period in the immediate future.

If the engineers had revised their appraisal on the basis of 51,500 tons of cast iron pipe and a reduction in cost of $13 per ton for 6-inch and larger pipe and $14 per ton for 4-inch pipe, they would have reduced their 1925 cost of reproduction appraisal between $500,000 and $600,000. The Commission in determining the present value made a reduction of but $405,000,

an average of less than $8 per ton or a unit cost of $37.60 per ton f. o. b. St. Louis.

The cost of 6-inch Class "B" and larger cast iron pipe had not been above $37.60 during the ten months prior to the date of the Commission's report and order which was July 10, 1928, P.U.R.1928D, 322, and prices of cast iron pipe had recovered but $2 per ton during the first six months of 1928. The average price of 6-inch Class "B" cast iron pipe f. o. b. St. Louis for the year 1927 was $40.14; this case and the news items of the cast iron pipe industry were full of the fact that French and Belgian pipe manufacturers were beating down pipe prices in the United States through large shipments of pipe; and the evidence shows that it is usual for the prices of pipe to increase during the construction season due to the greater demand. The Commission considered all of these circumstances and while the Commission's intention might have been clearer if it had determined the actual cost of reproduction as of December 31, 1927, and then to have added the $100,000 or more to cover its forecast on pipe prices, the results are identical, and it is the opinion of the Commission that it made an intelligent forecast in determining the fair value as of December 31, 1927.

However, at the last hearing in these cases, considerable testimony was given relative to the recovery of cast iron pipe prices and a representative of the industry stated that in his opinion the cost of pipe as prevailing on December 31, 1925, would soon be attained and further stated that the cost of 6-inch Class "B" and larger cast iron pipe was on September 1, 1928, $36 per ton f. o. b. Birmingham, Alabama.

The September cost of 6-inch Class "B" and larger cast iron pipe is $8.50 per ton greater than on January 1, 1928, and is $5.50 per ton less than on December 31, 1925. The cost of 4-inch cast iron pipe has remained at a figure that is $3 per ton greater than 6-inch cast iron pipe for a considerable period and indicates that an additional reduction of $1 per ton on this size should be considered.

In view of the evidence relative to the trend in pipe prices during the year 1928, the Commission is of the opinion that the

sum of $105,000 should be deducted from the costs of cast iron pipe as found by the Commission's engineers as of December 31, 1925. This deduction is at the rate of $2 per ton for all 6-inch and larger Class "B" cast iron pipe and $3 per ton for 4-inch cast iron pipe.

[2] Similar reasoning applies to the reduction of the cost of reproduction of meters. The evidence shows that during the year 1927 and at the present time, the company was and is purchasing its meters at a cost which is less than in 1925. This is due to the fact that such purchases are made by pooling the purchases of this company with the purchases of an allied company. A considerable amount of the stock of the St. Louis County Water Company is owned by the allied company and very naturally the two companies co-operate.

The fact remains that there is no evidence in this case that the company will not in the immediate future purchase meters at the same cost as during the year 1927. It would be grossly unfair to the consumers of St. Louis county to compel them to pay a return on an amount greater than the present cost when such cost is purely the result of good management by the owners. Utilities are usually allowed a monopoly in their business and in return should make every endeavor to operate their business as economically and efficiently as possible.

[3] The company further questions the methods adopted by the Commission's engineers and by the Commission relative to the cost of mains. The Commission believes its opinions and reasons are fully discussed and set forth in its report and order herein dated July 10, 1928, P.U.R.1928D, 322. The company introduced testimony and evidence as to costs which were estimates founded on experiences for the most part outside of St. Louis county and outside the state. The Commission adopted the experiences of contractors who had, during the past five or six years actually performed all the labor in connection with the laying of a large proportion of the company's distribution mains.

The Commission has no choice in its determination of the cost of mains for it would be the height of folly to choose the unit costs of laying mains in the many scattered places through-

out the United States that were mentioned herein as against the actual experience and costs to the company of so great an amount of pipe as has been laid during the past several years. As stated in our previous order of July 10, 1928, *supra,* there is no better evidence of what such items as labor of placing mains will cost than what they are actually costing.

[4] The facts relative to pipe-laying are to a great extent the controlling features in the allowance as made by the Commission for interest during construction. The evidence shows the largest pump or item of equipment the company owns could be constructed within a year, and that 41 miles of mains were laid by contractors for the company during 1925. There are a number of very thickly populated towns in St. Louis county, and the Commission in its determination of the amount of interest during construction that should be allowed, reasoned that a company starting a water system could build its plant and lay at least 41 miles of mains within a year and at a cost as allowed by the Commission; that said mains would be constructed in the densely populated sections; that the plant would be placed in operation and revenues obtained to counteract the interest charges; and that any further time necessary to complete the plant would be on an operating basis. The Commission believes this is a logical and sensible basis.

Both the city of University City and the company think the Commission has erred in its determination of going value.

The leading case on which going value is allowed is Des Moines Gas Co. v. Des Moines, 238 U. S. 153, 59 L. ed. 1244, P.U.R.1915D, 577, 35 Sup. Ct. Rep. 811, in which it is stated that an allowance for going concern value must be made, or for the fact that a property with its business attached and in successful operation has a greater value than the same property ready to operate but not operating and no business attached.

The Commission has carefully considered the subject of going value, used its best judgment, and is satisfied as to the reasonableness of the allowance made.

Adjusting the estimates of cost of reproduction as set forth on Sheet 48 of the Commission's report of July 10, 1928, P.U.R. 1928D, 322, we find the following:

	P. S. C. Engr's.	Baldwin	Howson
Subtotal	$3,603,373	$3,594,061	$3,591,599
Add for increased cost of cast iron pipe	300,000	300,000	300,000
Corrected subtotal	$3,903,373	$3,894,061	$3,891,599
Omissions and contingencies and construction overhead costs, 15%	585,506	584,109	583,740
Material and supplies	57,989	56,941	58,000
Cash working capital	105,000	108,000	100,000
Total estimated reproduction cost of physical property, exclusive of land	$4,651,868	$4,643,111	$4,633,339
Additions 12-31-1925 to 12-31-1927, exclusive of land	1,048,899	1,048,899	1,048,899
Total—December 31, 1927	$5,700,767	$5,692,010	$5,682,238

In view of the above, it appears that the reproduction cost of the physical property used in public service, exclusive of land, as of date December 31, 1927, is the sum of $5,692,000.

Adjusting the estimates of cost of reproduction less depreciation as set forth on Sheet 50 of the Commissioner's report of July 10, 1928, *supra,* we find the following:

	P. S. C. Engr's.	Baldwin	Howson
Subtotal	$3,287,642	$3,279,229	$3,338,247
Add for increase in cost of cast iron pipe, depreciated	291,000	291,000	291,000
Corrected subtotal	$3,578,642	$3,570,229	$3,629,247
Construction overheads, 15%	536,796	535,534	544,387
Material and supplies	57,989	56,941	58,000
Cash working capital	105,000	108,000	100,000
Total cost of reproduction less depreciation of physical property exclusive of land as of 12-31-25	$4,278,427	$4,270,704	$4,331,634

In view of the foregoing, it appears that the cost of reproduction less depreciation of the physical property used in public service, exclusive of land, as of date December 31, 1925, is the sum of $4,290,000.

Deducting depreciation accruing from December 31, 1925, to December 31, 1927, in the sum of $122,500 and adding additions and betterments, we find that the cost of reproduction less depreciation of physical property exclusive of land, as of date December 31, 1927, is the sum of $5,216,400.

In view of the foregoing and after a careful consideration of all the evidence and relevant facts herein, we find the present

fair value of the used and useful property of the St. Louis County Water Company including all elements of value, tangible and intangible, as of December 31, 1927, to be the sum of $5,500,000, and likewise the present fair value of property not used in public service to be the sum of $18,339.

The Commission does not find that said amount is a fair value for rate-making purposes.

[5] The Commission's accountants found that on December 31, 1927, there was on deposit with the company the sum of $521,870.51 which has been advanced by customers for distribution mains. This amount should be deducted from the fair value as found by the Commission to obtain the fair value for rate-making purposes, and the company states in its reply to the brief of the city of University City that this is the correct procedure. But the mains which this money represents are the unquestioned property of the company and must be included in the value of the property.

[6] The 1 per cent per year depreciation charge which is deducted from the moneys held on deposit must likewise be deducted from the depreciation allowance or a duplication of depreciation allowance would result. This amounts to $5,219.

The Commission's engineers found the annual depreciation requirement of the company to be the sum of $38,605 on property in use as of date December 31, 1925. (Commission's Exhibit "A"). This is slightly more than 1 per cent on the basis of their appraisal. The original cost of depreciable property in use as of date December 31, 1927, is $4,337,209. One and one-half per cent of this amount is approximately $65,000. The company during the year 1927 set aside the sum of $66,900.36.

The Commission is of the opinion that the company may within a few years be obtaining its water supply from the city of St. Louis and when this event happens, there will be approximately $300,000 of pumping plant removed from the company's books. While future customers should not be concerned with a plant that has been abandoned, and while this Commission cannot allow the company to set up a depreciation fund for the full value of their plant since the company did not start a depreciation reserve until 1909 while some of the plant was constructed

as early as 1902, still the Commission feels that the company is entitled to a larger allowance, in view of this contingency, than is estimated by its engineers. The balance of $442,205.15 in the depreciation reserve fund is ample to take care of any such contingency without a further increase in the annual allowance.

The Commission will not disturb its former order of allowing the company to set aside 1½ per cent of its depreciable property as an annual depreciation requirement.

[7] The Commission is of the opinion that a 7 per cent return on the present fair value for rate-making purposes is just and reasonable at this time. The principle reason for this opinion is the fact that this company has a large mileage of distribution mains on which the number of attached customers is small as compared with most city and town systems. The Commission believes that the growth of St. Louis county during the past few years indicates a rapid increase in the number of customers per mile of main and per dollar of investment which will result in a steady increase in the rate of return and a decrease of rates from time to time, or in other words, the Commission is of the opinion that the revenue from future customers will possibly be more than the charges against investment for transmission mains, pumping equipment, general offices, and like items which are not a direct investment for the customer in the same sense as an extension of distribution mains to serve such added customers.

Summarizing earnings we find the following:

Net revenue for depreciation and return for the year 1927		$508,695
Deduct 1½% for depreciation on depreciable property ..	$65,000	
Less 1% depreciation paid by consumers on $521,870 of deposits	5,219	59,781
Available revenue for return		$448,914
Fair value of property		$5,500,000
Less consumer's deposits on hand		521,870
Present fair value for rate-making		$4,978,130
Amount earned in excess of 7%		101,445
Net water sales in 1927	$865.178.04	
Earnings from fire protection rentals, 1927	35,456.00	
Necessary decrease in rates to earn 7% return		11.75%
Necessary decrease in rates, excluding fire protection rentals, to net 7% return		12.22%

The present fire hydrant rates are in effect.

University City—$50 per year per hydrant. Where no franchise contract exists for fire hydrant service, $60 per year per hydrant if installed by the company, $50 per year per hydrant if installed by the consumer. Where installed on private property at the expense of consumer $50 per year for first hydrant. $25 per year for each additional hydrant. Rates for fire protection risers in buildings. 2-inch riser, $20 per year for first riser, $15 per year for each additional riser. 4-inch or equivalent, $25 per year per riser.

The Commission is of the opinion that the present fire protection rates are fair and equitable and should not be disturbed. The following rates for hydrant rental in some cities and towns of this state that have franchise contracts with the water utility indicates the rates as charged by the St. Louis County Water Company are reasonable.

Sedalia	$99.00	per hydrant
Springfield	60.00	
Jefferson City	66.95	
Lexington	65.00	
Excelsior Springs	60.00	for 1st 50—remainder at $50.00
Mexico	45.00	for 1st 78—remainder at 55.00
St. Joseph	48.00	
Independence	47.00	for 1st 85—remainder at 40.00
Clinton	50.00	

The Commission is of the further opinion that the metered rates as now charged by the St. Louis County Water Company are excessive and should be reduced.

An order in accordance with the above will be issued. [Order omitted.]

Ing, Chairman, Calfee, Porter, Painter and Hutchison, Commissioners, concur.

P.U.R.1929B.